

**MASTER AGREEMENT
ENERGY PERFORMANCE CONTRACT
EV2820 C**

This Master Agreement is made and entered into between Schneider Electric (ESCO), having its principal offices at 15200 Santa Fe Trail Drive Suite 202, Lenexa, Kansas 66219, and The City of Kansas City, Missouri (KCMO).

WITNESSETH

WHEREAS, KCMO desires to retain the services of an energy service company to identify and implement energy performance measures at facilities owned by KCMO; and

WHEREAS, ESCO is a company with experience and technical and management capabilities to provide for energy audits, design, engineering, procurement, installation, maintenance and monitoring of energy, water and other operating cost saving measures; and

WHEREAS, ESCO has submitted a response to KCMO's Request for Proposal RFP EV2820 ("RFP") attached hereto and incorporated into this Master Agreement, pertaining to the energy audits, design, engineering, procurement, installation, maintenance, and monitoring of energy conservation measures; and

WHEREAS, the City's Construction General Conditions are incorporated into this Master Agreement applicable to all projects awarded under this Master Agreement; and

WHEREAS, KCMO has selected ESCO to be eligible to compete for Energy Performance Contracts; and

WHEREAS, ESCO agrees to perform Technical Energy Audits for KCMO facilities to determine the feasibility of entering into an Energy Performance Task Order Contract to provide for the installation and implementation of energy, water and other operating cost saving measures; and

WHEREAS, at the City's request the ESCO will assist City in obtaining financing for the project. Regardless of the financing obtained, the City may choose to contribute additional funds, but no capital or out of pocket dollars will be required from the City. Invoicing and payment terms will be tailored to meet the requirements of the City specified within the Energy Performance Task Order Contract and will be structured to match the City's fiscal cycle; and

WHEREAS, based upon evaluation of the Technical Energy Audits submitted by the ESCOs under this Master Agreement, KCMO will select the ESCO providing the lowest and best proposal to the City with which to negotiate an Energy Performance Task Order Contract, under which the ESCO will design, engineer, procure, install, implement, maintain and/or monitor such measures or at its discretion select an ESCO for a particular project as determined by the City.

WHEREAS, both parties agree that all provisions outlined in Missouri Statute 8.231 shall be adhered; and

WHEREAS, parties agree that all notices required by this Master Agreement shall be sent in writing to City's contact listed below and Contractor.

City Contact: Manager of Procurement Services /City Hall 414 East 12th Street Kansas City, Missouri 64106.

Phone: (816)-513-0798

E-mail address: dDarrell.everette@kcmo.org

Contractor Contact: Schneider Electric

Name: Peter Hinkle, Program Manager

Phone: (913)- 433-6609

E-mail address: Peter.Hinkle@se.com

All notices are effective (a) when delivered in person, (b) upon confirmation of receipt when transmitted by electronic mail, (c) upon receipt after dispatch by registered or certified mail, postage prepaid, (d) on the next business day if transmitted by overnight courier (with confirmation of delivery), or (e) three business days after the date of mailing, whichever is earlier.

THEREFORE, the parties agree as follows:

1. Technical Energy Audit. ESCO agrees to submit Technical Energy Audit & Project Development Proposals in accordance with the Technical Energy Audit & Project Development Proposal Expectations as attached hereto.
2. Fees. ESCO agrees not to exceed a charge of \$0.05 fee for standard facility audit to KCMO associated with performing the Technical Energy Audit & Project Development Proposals.
3. Energy Performance Contract Task Order. KCMO and ESCO agree to utilize the Energy Performance Task Order Attachment A1 attached hereto as the basis for developing Energy Performance Contracts.
4. Length of Master Agreement. The initial term of this Master Agreement Contract shall be effective for 5 years, whereas the City may enter into an Energy Performance Task Order Contracts with the ESCO for a period of up to 5 years. The Manager of Procurement Services is authorized to extend this Master Agreement on behalf of the City at its sole discretion for up to two (2) additional five (5) year periods not to exceed fifteen (15) years.
5. ESCO may submit a proposal on projects as requested by the City over the course of this Agreement.

CONTRACTOR

I hereby certify that I have the authority to execute
this document on behalf of CONTRACTOR.

Contractor: Schneider Electric

By: Darrell DeMoss
Digitally signed by Darrell DeMoss
DN: cn=Darrell DeMoss, o, ou, email=darrell.demoss@se.com, c=US
Date: 2022.04.20 14:02:09 -05'00'

Title: Director of Operations

Date: 4/20/2022

APPROVED AS TO FORM

DocuSigned by:
Dustin Johnson
D4Z18E93F7814DB
Assistant City Attorney

KANSAS CITY, MISSOURI

DocuSigned by:
By: Darrell DeMoss
D4Z18E93F7814DB

Title: Manager of Procurement Services

Date: 4/29/2022

TECHNICAL ENERGY AUDIT & PROJECT DEVELOPMENT PROPOSAL EXPECTATIONS

The following is provided to set the standard of expectations for preparation of the Technical Energy Audit & Project Development Proposal.

1. Scope of Work

The Technical Energy Audit and Project Development Proposal shall be performed as described below:

- a. **Facilities Included in Scope** The following is a list of the facilities to be included in this report: *<List of facilities in project to be inserted here>*
- b. **Scope Guidelines and Requirements (Replace Customer with City)**
 - 1) Contract Term. The contract term shall be no greater than 15 years.
 - 2) Annual Guaranteed Cost Savings. The annual measurement and verification of savings is required for the first three years of the contract term. City may require the measurement and verification of savings for the entire term of the contract, however City reserves the option to eliminate the measurement and verification of savings at any time. The cost savings is attributable to all energy saving measures, and must equal or exceed all project costs each year during the contract period. Annual project costs include debt service, contractor fees, maintenance services, monitoring services, and other services. Annual cost savings beyond the guaranteed minimum savings will be held by Customer, and will not be allocated to shortfalls in other years or to other facilities in the Project.
 - 3) Annual Savings Estimates: The utility and operational and maintenance cost savings for all measures must be estimated for each year during the contract period.
- c. **Establish allowable cost and savings factors approved for consideration by Customer.** Customer will provide ESCO with sufficient guidance to develop savings estimates.
 - 1) Allowable payment sources:
 - a) Energy and water savings
 - b) Customer material/commodity savings, including scheduled replacement of parts
 - c) Outside labor cost savings, including maintenance contracts
 - 2) Payment sources that can be negotiated:
 - a) Customer in-house labor costs
 - b) Customer deferred maintenance cost
 - c) Offset of future customer capital cost

- 3). The following markup costs will be used in the Technical Energy Audit and subsequent Energy Performance Contract, however, actual scope and size of project may change and necessitate a change in the markups provided below.

<u>Cost category</u>	<u>%</u>
Engineering and Design	_____
Construction Management	_____
Measurement and Verification	_____
Overhead	_____
Profit	_____
_____	_____

- d. **Collect data and background information from Customer** concerning facility operation and energy use for the most recent three years from the effective date of this Report as follows.
- 1) Building square footage.
 - 2) Construction data of buildings and major additions
 - 3) Utility company invoices
 - 4) Occupancy and usage information
 - 5) Description of all energy-consuming or energy-saving equipment used on the premises, as available.
 - 6) Description of energy management procedures utilized on the premises
 - 7) Description of any energy-related improvements made or currently being implemented
 - 8) Description of any changes in the structure of the facility or energy-using or water-using equipment
 - 9) Description of future plans regarding building modifications or equipment modifications and replacements
 - 10) Drawings, as available (may include mechanical, plumbing, electrical, building automation and temperature controls, structural, architectural, modifications and remodels)
 - 11) Original construction submittals and factory data (specifications, pump curves, etc.), as available
 - 12) Operating engineer logs, maintenance work orders, etc., as available
 - 13) Records of maintenance expenditures on energy-using equipment, including service contracts
 - 14) Prior energy audits or studies, if any
 - 15) Environmental reports, such as asbestos surveys

Customer agrees to work diligently to furnish ESCO, upon request, accurate and complete data and information as available. Where information is not available from Customer, ESCO is expected to make a diligent effort to collect such information through the facility inspection, staff interviews, and utility companies.

ESCO is expected to work diligently to assess validity of information provided and to confirm or correct the information as needed.

e. **Perform a facility inspection.**

- 1) Interview the facility manager, maintenance staff or others regarding:
 - a) Facility operation, including energy management procedures
 - b) Equipment maintenance problems
 - c) Comfort problems and requirements
 - d) Equipment reliability,
 - e) Projected equipment needs, etc.
 - f) Occupancy and use schedules for the facility and specific equipment.
 - g) Facility improvements, past and planned
- 2) Inspect major energy-using equipment, including but not limited to:
 - a) Lighting (indoor and outdoor)
 - b) Heating and heat distribution systems
 - c) Cooling systems and related equipment
 - d) Automatic temperature control systems and equipment
 - e) Air distribution systems and equipment
 - f) Outdoor ventilation systems and equipment
 - g) Exhaust systems and equipment
 - h) Hot water systems
 - i) Electric motors, transmission and drive systems
 - j) Special systems (kitchen/dining equipment, swimming pools, laundry equipment, etc.)
 - k) Renewable energy systems
 - l) Other energy using systems
 - m) Water consuming systems (restroom fixtures, water fountains, irrigation systems, etc.)
- 3) Perform "late-night" surveys outside of normal business hours or on weekends to confirm building system and occupancy schedules, if deemed necessary.
- 4) Develop a preliminary list of potential energy and water saving measures. Consider the following for each system:
 - a) Comfort and maintenance problems
 - b) Energy use, loads, proper sizing, efficiencies and hours of operation
 - c) Current operating condition
 - d) Remaining useful life
 - e) Feasibility of system replacement
 - f) Hazardous materials and other environmental concerns
 - g) Customer's future plans for equipment replacement or building renovations
 - h) Facility operation and maintenance procedures that could be affected

Customer will allow ESCO reasonable access to facility staff to ensure understanding of existing systems and opportunities.

ESCO is expected to work diligently to assess validity of information provided and to confirm or correct the information as needed.

f. **Establish base year consumption and reconcile with end use consumption estimates.** ESCO shall:

- 1) Examine utility bills for the past 1- 3 years and establish base year consumption for electricity, gas, steam, water, etc. in terms of energy units (kWh, kW, ccf, Therms, gallons, or other units used in bills) and in terms of dollars and in terms of dollars per square foot. Describe the process used to determine the base year (averaging, selecting most representative contiguous 12 months, etc.). Consult with facility personnel to account for any anomalous schedule or operating conditions on billings that could skew the base year representation. ESCO will account for periods of time when equipment was broken or malfunctioning in calculating the base year.
- 2) Estimate loading, usage and/or hours of operation for all major end uses of total facility consumption including, but not limited to:
 - a) Lighting
 - b) Heating
 - c) Cooling
 - d) HVAC motors (fans and pumps)
 - e) Plug loads
 - f) Kitchen equipment
 - g) Other/miscellaneous

Where loading or usage are highly uncertain (including variable loads such as cooling), ESCO will use its best judgment, spot measurements or short-term monitoring. ESCO should not assume that equipment run hours equal the operating hours of the building(s) or facility staff estimates.

- 3) Reconcile annual end-use estimated consumption with the annual base year consumption. This reconciliation will place reasonable “real-world” limits on potential savings.
- 4) Propose adjustments to the baseline for energy and water saving measures that will be implemented in the future and that will remain separate from the Energy Performance Contract.

g. **Analyze savings and costs for each energy and water saving measure.**

- 1) Consider technologies in a comprehensive approach including, but not limited to: lighting systems, heating/ventilating/air conditioning equipment and distribution systems, controls systems, building envelope, motors, kitchen equipment, pools, renewable energy systems or other special equipment, irrigation, water saving devices.
- 2) Follow the methodology of ASHRAE or other nationally-recognized authority and be based on the engineering principle(s) identified in the description of the retrofit option
- 3) Utilize assumptions, projections and baselines which best represent the true value of future energy or operational savings. Include accurate marginal costs

for each unit of savings at the time the audit is performed, documentation of material and labor cost savings, adjustments to the baseline to reflect current conditions at the facility, calculations which account for the interactive effects of the recommended measures.

- 4) Use best judgement regarding the employment of instrumentation and recording durations so as to achieve an accurate and faithful characterization of energy use
- 5) Use markups and fees stated above where applicable in all cost estimates
- 6) Develop a preliminary measurement and verification plan for each measure
- 7) Follow additional guidelines for analysis and report preparation given below
- 8) Include cost to provide services and complete application for Energy Star Label.

h. **Prepare the “Technical Energy Audit” report.** The primary purpose of the report is to provide an engineering and economic basis for negotiating a potential Energy Performance Contract between the Customer and the ESCO. The report should include:

- 1) Overview
 - a) Contact information
 - b) Summary table of recommended energy and water saving measures, with itemization for each measure of design and construction cost, annual maintenance costs, the first year cost avoidance (in dollars and energy units), simple payback and equipment service life
 - c) Summary of annual energy use and costs of existing or base year condition
 - d) Calculation of cost savings expected if all recommended measures are implemented. Include total percentage savings.
 - e) Description of the existing facility, mechanical and electrical systems
 - f) Summary description of measures, including estimated costs and savings for each as detailed above
 - g) Discussion of measures considered but not investigated in detail
 - h) Conclusions and recommendations
- 2) Base year energy use
 - a) Description and itemization of current billing rates, including schedules.
 - b) Summary of all utility bills
 - c) Base year consumption and description of how established
 - d) End use reconciliation with base year (include discussion of any unusual findings)
- 3) Full description of **each** energy and water saving measure including:
 - a) Written description
 - (1) Existing conditions
 - (2) Recommendations. Include discussion of facility operations and maintenance procedures that will be affected by installation/implementation. Present the plan for installing or implementing the recommendation.
 - b) Savings calculations
 - (1) Base year energy use and cost
 - (2) Post-retrofit energy use and cost

- (3) Savings estimates including analysis methodology, supporting calculations and assumptions used.
 - (4) Annual savings estimates. The cost savings for all energy saving measures must be estimated for each year during the contract period. Savings must be able to be achieved each year (cannot report average annual savings over the term of the contract).
 - (5) Savings estimates must be limited to savings allowed by the Customer as described above and in accordance with Section 8.231, RSMo.
 - (6) Percent cost-avoidance projected
 - (7) Description and calculations for any proposed rate changes
 - (8) Explanation of how savings interactions between retrofit options is accounted for in calculations.
 - (9) Operation and maintenance savings, including detailed calculations and description. Ensure that maintenance savings are only applied in the applicable years and only during the lifetime of the particular equipment.
 - (10) If computer simulation is used, include a short description and state key input data. If requested by Customer, access will be provided to the program and all assumptions and inputs used, and/or printouts shall be provided of all input files and important output files and included in the Technical Energy Audit with documentation that explains how the final savings figures are derived from the simulation program output printouts
 - (11) If manual calculations are employed, formulas, assumptions and key data shall be stated.
 - (12) Conclusions, observations, caveats
- c) Cost estimate -- detailed scope of the construction work needed, suitable for cost estimating. Include all anticipated costs associated with installation and implementation.
- (1) Engineering/design costs
 - (2) Contractor/vendor estimates for labor, materials, equipment; include special provisions, overtime, etc., as needed to accomplish the work with minimum disruption to the operations of the facilities.
 - (3) Permit costs
 - (4) Construction management fees
 - (5) Environmental costs or benefits (disposal, avoided emissions, handling of hazardous materials, etc.)
 - (6) Note that all markups and fees stated in this Report shall be used in the cost estimates, unless otherwise documented and justified due to change in scope or size of project or other unforeseen circumstances.
 - (7) Conclusions, observations, caveats
 - (8) Other cost categories as defined above under "markups" in Section 1c above.

- d) Other
 - (1) Estimate of average useful service life of equipment
 - (2) Preliminary commissioning plan
 - (3) Preliminary measurement and verification plan, explaining how savings from each measure is to be measured and verified (stipulated by Contract, utility bill analysis, end-use measurement and calculation, etc.)
 - (4) Discussion of impacts that facility would incur after contract ends. Consider operation and maintenance impacts, staffing impacts, budget impacts, etc.
 - (5) Compatibility with existing systems.
 - 4) Complete appendices that document the data used to prepare the analyses. Describe how data were collected.
- i. **Prepare a proposed Project Development Agreement** in anticipation of ESCO and Customer entering into an Energy Performance Contract to design, install, and monitor the energy and water saving measures proposed in the Technical Energy Audit.
 - 1) Project Cost is the total amount Customer will pay for the project and ESCO's services. Costs must be consistent with maximum markups and fees established above. Costs may include but are not limited to:
 - a) Engineering, designing, packaging, procuring, installing (from Technical Energy Audit Report results)
 - b) Financing (based on interest rates likely available to Customer at this time)
 - c) Performance/payment bond costs
 - d) Construction management fees
 - e) Commissioning costs
 - f) Maintenance fees
 - g) Monitoring fees
 - h) Training fees
 - i) Legal services
 - j) Overhead and profit
 - k) Other markups
 - 2) Include a List of Services that will be provided as related to each cost.
- j. **Prepare a preliminary analysis of energy performance contract terms** to include:
 - 1) List of energy and water saving measures included in recommended package
 - 2) Interest rate used in the analysis
 - 3) Expected contract term (in number of years)
 - 4) Analysis of annual cashflow for Customer during the contract term
 - 5) Explanation of how savings will be calculated and adjusted due to weather (such as heating or cooling degree days), occupancy changes or other factors.

2. Submittal of Technical Energy Audit and Project Development Agreement

Submit the Technical Energy Audit and Project Development Agreement to KCMO for consideration. It is the intent of KCMO to evaluate the submitted Technical Energy Audits and Project Development Proposals and select the ESCO offering the most advantageous proposal for which to negotiate an Energy Performance Contract, under which the ESCO will design, install and implement energy and water saving measures which the Parties have agreed to and provide certain maintenance and monitoring services. However, nothing in this document should be construed as an obligation on any of the Parties to execute such an Contract. The parties shall negotiate the terms and provisions of such an Energy Performance Contract will be set forth in a separate Contract.

Attachment - A1

TASK ORDER NO. _____
PROJECT NO. _____
PROJECT TITLE _____

IN ACCORDANCE WITH EV2820 - MASTER CONTRACT
ESCO Services

Department:	Contractor:
City Representative/ Project Manager:	Contractor Project Manager:
Contact Information:	Contact Information:
Maximum Obligation:	MBE/WBE Commitment (Approved CUP): XX % MBE XX % WBE

Note: Customize attachments for Task Order specific purpose.

- A. Scope of Services
- B. Project Schedule [Optional]
- C. Deliverables
- D. Attachments to the Task Order
 - 1. Attachment ____ Non-Construction Subcontractors Listing
 - 2. Attachment ____ Approved Contractor Utilization Plan [If Applicable]
 - 3. Attachment ____
 - 4. Financial Agreement [If Applicable]
- E. Additional Information

CONTRACTOR

I hereby certify that I have the authority to execute
this document on behalf of CONTRACTOR.

Contractor: _____

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM

Assistant City Attorney

KANSAS CITY, MISSOURI

By: _____

Title: _____

Date: _____

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

Director of Finance

STANDARD TERMS AND CONDITIONS

Sec. 1. General Indemnification.

A. For purposes of this Section 1 only, the following terms shall have the meanings listed:

a. **Claims** means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys' fees, including attorneys' fees incurred by the City in the enforcement of this indemnity obligation.

b. **Contractor's Agents** means Contractor's officers, employees, subcontractors, successors, assigns, invitees, and other agents.

c. **City** means City, its Agencies, its agents, officials, officers and employees.

B. Contractor's obligations under this Section with respect to indemnification for acts or omissions, including negligence, of City, shall be limited to the coverage and limits of insurance that Contractor is required to procure and maintain under this Contract. Contractor affirms that it has had the opportunity to recover all costs of the insurance requirements imposed by this Contract in its contract price.

C. Contractor shall defend, indemnify and hold harmless City from and against all claims arising out of or resulting from all acts or omissions in connection with this Contract caused in whole or in part by Contractor or Contractor's Agents, regardless of whether or not caused in part by any act or omission, including negligence, of City. Contractor is not obligated under this Section to indemnify City for the sole negligence of City.

D. In no event shall the language in this section constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

Sec. 2. Insurance.

A. Contractor shall procure and maintain in effect throughout the term of this Contract insurance policies with coverage not less than the types and amounts specified in this Section. Contractor must have:

1. Commercial General Liability Insurance Policy: with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:

- a. Severability of Interests Coverage applying to Additional Insureds
- b. Contractual Liability
- c. Per Project Aggregate Liability limit
- d. No Contractual Liability Limitation Endorsement
- e. Additional Insured Endorsement, ISO form CG2010 11 85, current edition, or their equivalent.

2. Workers' Compensation Insurance: as required by statute, including Employers Liability with limits of:
Workers' Compensation Statutory Employers Liability \$100,000 accident with limits of:

\$500,000 disease-policy limit
\$100,000 disease-each employee

3. Commercial Automobile Liability Insurance Policy: with a limit of \$1,000,000, covering owned, hired, and non-owned automobiles. The Policy shall provide coverage on an "any auto" basis and on an "each accident" basis. This insurance policy will be written on a Commercial Automobile Liability form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Contract, by Contractor.

B. The Commercial General Liability Insurance specified above shall provide that City and its agencies, agents, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds, including completed operations, for the services performed under this Contract. Contractor shall provide to City at execution of this

Contract a certificate of insurance showing all required coverage and additional insureds. The certificates of insurance will contain a provision stating that should any of the policies described in the certificate be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

C. All insurance policies must be provided by Insurance Companies that have an A.M. Best's rating of "A-V" or better, and are licensed or authorized by the State of Missouri to provide insurance in Missouri.

D. Contractor's failure to maintain the required insurance coverage will not relieve Contractor of its contractual obligation to indemnify the City pursuant to Section 1. If the coverage afforded is cancelled or changed or its renewal is refused, Contractor shall give at least thirty (30) days prior written notice to City. In the event Contractor fails to maintain the required insurance coverage in effect, City may order Contractor to immediately stop work, and upon ten (10) days notice and an opportunity to cure, may pursue its remedies for breach of this Contract as provided for herein and by law.

E. In no event shall the language in this Section constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions and by law.

Sec. 3. Bonds.

A. If the Scope of Work requires Contractor to furnish a Payment Bond and Performance Bond or Performance and Maintenance Bond (collectively hereinafter the Bonds), Contractor shall furnish such Bonds, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract. These Bonds shall remain in effect at least until one (1) year after the date when final payment of the Contract becomes due.

B. All Bonds shall be in the form prescribed by the City, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A certified copy of such agent's authority to act must accompany all Bonds signed by an agent.

C. The Surety must:

1. Be licensed by the State of Missouri to issue bonds in the State of Missouri; and
2. Retain an A.M. Best rating of "B+", Class V" for Bonds in excess of \$200,000.

D. If the surety on any Bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirement of this Section, Contractor shall within twenty (20) days thereafter substitute another Bond and surety, both of which must be acceptable to City.

Sec. 4. Independent Contractor. Contractor is an independent contractor and is not City's agent. Contractor has no authority to take any action or execute any documents on behalf of City.

Sec. 5. Term of Contract.

This Contract shall not be a legally binding document until the latest date that all of the following occur: (1) the Bid Form/Contract is signed by all parties; (2) the Bid Form/Contract is approved as to form by the City Law Department; (3) availability of any City funds is certified by the City's Director of Finance; and (4) if required, the effective date of any ordinance passed by the City Council or resolution passed by the Park Board. This Contract shall end one year later unless a different term of contract is specified in the Scope of Work. The Director is authorized to enter into an amendment to extend the term of this Contract and time of performance for this Contract.

Sec. 6. Payment.

It shall be a condition precedent to payment of any invoice from Contractor that Contractor is in compliance with, and not in breach or default of, all provisions of this Contract. If damages are sustained by City as a result of breach or default by

Contractor, City may withhold payment(s) to Contractor for the purpose of set off until such time as the exact amount of damages due City from Contractor may be determined.

Contractor agrees that the City will not process Contractor's request for payment unless the City determines Contractor's request for payment is in proper form, correctly computed, and properly payable under the provisions of this Contract.

Contractor shall be paid monthly unless a different payment schedule is specified in the Scope of Work.

Sec. 7. Governing Law. This Contract shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. The City and Contractor: (1) submit to the jurisdiction of the state and federal courts located in Jackson County, Missouri; (2) waive any and all objections to jurisdiction and venue; and (3) will not raise forum non conveniens as an objection to the location of any litigation.

Sec. 8. Compliance with Laws. Contractor shall comply with all federal, state and local laws, ordinances and regulations applicable to the work and this Contract.

Sec. 9. City's Right to Terminate for Convenience.

A. City may, at any time upon ten (10) days notice to Contractor specifying the effective date of termination, terminate this Contract, in whole or in part.

B. If City terminates this Contract, City shall only be liable for payment for services rendered before the effective date of termination. Contractor shall prepare an accounting of the services performed and direct costs incurred by Contractor up to the effective date of termination and shall return to City any remaining sums within thirty (30) days of the effective date of termination. All work or materials prepared or obtained by Contractor pursuant to this Contract shall become City's property.

C. Contractor agrees it has no right to terminate this Contract for convenience.

Sec. 10. Default and Remedies.

If Contractor shall be in default or breach of any provision of this Contract, City may terminate this contract, suspend City's performance, withhold payment or invoke any other legal or equitable remedy after giving Contractor seven (7) days written notice and opportunity to cure such default or breach.

If City shall be in default or breach of any provision of this Contract, Contractor may terminate this contract or suspend Contractor's performance after giving City fifteen (15) days written notice and opportunity to cure such default or breach.

Sec. 11. Waiver or Modification.

A. Except as specifically provided in this Contract, no provision of this Contract may be waived, modified or amended except in writing signed by City.

B. If the City shall waive any provision of this Contract, it shall not operate as the City's waiver of the Contractor's subsequent breach or noncompliance with the provision. City shall be entitled to invoke any contractual or legal remedy available to City despite any of the City's previous waiver(s) of the Contractor's breach or noncompliance with the Contract provisions.

Sec. 12. Headings; Construction of Contract. The headings of each section of this Contract are for reference only. Unless the context of this Contract clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.

Sec. 13. Severability of Provisions. Except as specifically provided in this Contract, all of the provisions of this Contract shall be severable. If any provision of this Contract is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Contract shall be valid unless the court finds that the valid provisions of this Contract are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Contract could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

Sec. 14. Records.

A. For purposes of this section:

1. “City” shall mean the City Auditor, the City’s Internal Auditor, the City’s Director of Human Relations, the City Manager, the City department administering this Contract and their delegates and agents.

2. “Record” shall mean any document, book, paper, photograph, map, sound recordings or other material, regardless of physical form or characteristics, made or received in connection with this Contract and all Contract amendments and renewals.

B. Contractor shall maintain and retain all Records for a term of five (5) years that shall begin after the expiration or termination of this Contract and all Contract amendments. City shall have a right to examine or audit all Records and Contractor shall provide access to City of all Records upon ten (10) days written notice from the City.

Sec. 15. Affirmative Action. If this Contract exceeds \$300,000.00 and Contractor employs fifty (50) or more people, Contractor shall comply with City’s Affirmative Action requirements in accordance with the provisions of Chapter 3 of City’s Code, the rules and regulations relating to those sections, and any additions or amendments thereto; in executing any Contract subject to said provisions, Contractor warrants that it has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the Contract. Contractor shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 3 of City’s Code. Contractor shall:

1. Submit, in print or electronic format, a copy of Contractor’s current certificate of compliance to the City’s Human Relations Department (HRD) prior to receiving the first payment under the Contract, unless a copy has already been submitted to HRD at any point within the previous two calendar years. If, and only if, Contractor does not possess a current certification of compliance, Contractor shall submit, in print or electronic format, a copy of its affirmative action program to HRD prior to receiving the first payment under the Contract, unless a copy has already been submitted to HRD at any point within the previous two calendar years.

2. Require any Subcontractor awarded a subcontract exceeding \$300,000.00 to affirm that Subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.

3. Obtain from any Subcontractor awarded a subcontract exceeding \$300,000.00 a copy of the Subcontractor’s current certificate of compliance and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed. If, and only if, Subcontractor does not possess a current certificate of compliance, Contractor shall obtain a copy of the Subcontractor’s affirmative action program and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed.

City has the right to take action as directed by City’s Human Relations Department to enforce this provision. If Contractor fails, refuses or neglects to comply with the provisions of Chapter 3 of City’s Code, then such failure shall be deemed a total breach of this Contract and this Contract may be terminated, canceled or suspended, in whole or in part, and Contractor may be declared ineligible for any further contracts funded by City for a period of one (1) year. This is a material term of this Contract.

Sec. 16. Minority and Women’s Business Enterprises. City is committed to ensuring that minority and women’s business enterprises (MBEs/WBEs) participate to the maximum extent possible in City contracts. If this Contract contained DBE or MBE and/or WBE goals, Contractor certifies that it shall implement its Contractor Utilization Plan, which is incorporated herein as part of the Bid Form/Contract. Contractor shall comply with all of the requirements imposed by the City’s HRD Forms and Instructions for Non-Construction Bids and its Contractor Utilization Plan. Contractor’s compliance with this Section is a material part of this Contract.

Sec. 17. Tax Compliance. If the Contract Price exceeds \$150,000.00, Contractor shall provide proof of compliance with the City's Business License and Earnings and Profits Tax ordinances (City taxes) from the City's Commissioner of Revenue. Contractor's proof of compliance with City taxes is a precondition to the City making the first payment under this Contract and any contract renewal.

Sec. 18. City's Buy American and Missouri Preference Policies. It is the policy of the City that any manufactured goods or commodities used or supplied in the performance of any City contract or any subcontract thereto shall be manufactured or produced in the United States whenever possible. Pursuant to Section 71.140 RSMo., preference shall be given to materials, products, supplies and all other articles produced, manufactured, made or grown within the State of Missouri.

Sec. 19. Assignability & Subcontracting.

(a) Assignability. Contractor shall not assign or transfer any part or all of Contractor's obligation or interest in this Contract without prior written approval of City. If Contractor shall assign or transfer any of its obligations or interests under this Contract without the City's prior written approval, it shall constitute a material breach of this Contract. This provision shall not prohibit contractor from subcontracting as otherwise provided for herein.

(b) Subcontracting. Contractor shall not subcontract any part or all of Contractor's obligations or interests in this Contract unless the subcontractor has been identified in a format required by City. If Contractor shall subcontract any part of Contractor's obligations or interests under this Contract without having identified the subcontractor, it shall constitute a material breach of this Contract. The utilization of subcontractors shall not relieve Contractor of any of its responsibilities under the Contract, and Contractor shall remain responsible to City for the negligent acts, errors, omissions or neglect of any subcontractor and of such subcontractor's officers, agents and employees. City shall have the right to reject, at any point during the term of this Contract, any subcontractor identified by Contractor, and to require that any subcontractor cease working under this Contract. City's right shall be exercisable in its sole and subjective discretion. City shall not be obligated to pay or be liable for payment of any monies which may be due to any subcontractor. Contractor shall include in any subcontract a requirement that the subcontractor comply with all requirements of this Contract in performing Contractor's services hereunder.

Sec. 20. Conflicts of Interest. Contractor certifies that no officer or employee of City has, or will have, a direct or indirect financial or personal interest in this Contract, and that no officer or employee of City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Contractor in this Contract.

Sec. 21. Rules of Contract Construction. City and Contractor agree that this Contract shall be construed without regard to any presumption or other rule requiring construction of the Contract against the party causing the contract to be drafted.

Sec. 22. Reports. Contractor shall provide City detailed reports of actual Contract usage by contract category each quarter and annually at no cost to the City.

Sec. 23. Notices. All notices required by this Contract shall be in writing sent by facsimile, regular U.S. mail, postage prepaid or commercial overnight courier to the person and address listed on the Bid Form/Contract if to the Contractor and to the City person and address listed on the Acceptance of Bid portion of the Bid Form/Contract. All notices are effective on the date facsimiled, mailed or deposited with courier.

Sec. 24. Extension of Contract Term. City shall have a unilateral right to extend the term of this Contract beyond the expiration of the initial contract term and all contract renewal terms until the City has executed a new contract.

Section 25. Employee Eligibility Verification.

If this contract exceeds five thousand dollars(\$5,000.00), Contractor shall execute and submit an affidavit, in a form prescribed by City, affirming that Contractor does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S.C. § 1324a(h)(3).

Contractor shall attach to the affidavit documentation sufficient to establish Contractor's enrollment and participation in an electronic verification of work program operated by the United States Department of Homeland Security(E-Verify) or an equivalent federal work authorization program authorized by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986.

Contractor may obtain additional information about E-Verify and enroll at www.dhs.gov/xprevprot/program/gc_1185221678150shtm . For those Contractors enrolled in E-Verify, the first and last pages of the E-Verify Memorandum of Understanding that Contractor will obtain upon successfully enrolling in the program shall constitute sufficient documentation for purposes of complying with this Section. Contractor shall submit the affidavit and attachments to City prior to execution of the Contract, or at any point during the term of the Contract if requested by City.

Sec. 26. Quality Services Assurance Act. If this Contract exceeds \$160,000.00, Contractor certifies Contractor will pay all employees who will work on this Contract in the city limits of Kansas City, Missouri at least \$12.50 per hour in compliance with the CITY's Quality Services Assurance Act, Section 3-66, Code of Ordinances or City has granted Contractor an exemption.

Sec. 27. Anti-Discrimination Against Israel. If this Contract exceeds \$100,000.00 and Contractor employs at least ten employees, pursuant to Section 34.600, RSMo., by executing this Contract, Contractor certifies it is not currently engaged in and shall not, for the duration of this contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.

CONSTRUCTION GENERAL CONDITIONS

Construction GENERAL CONDITIONS

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ARTICLE 1 DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

- A. Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:
1. **Addenda** - Written or graphic instruments issued prior to the opening of Bids that clarify, correct or change the Bidding Requirements or the Contract Documents.
 2. **Agreement**—The written Contract between CITY and CONTRACTOR governing the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.
 3. **Application for Payment**—The form accepted by CITY's Representative which is to be used by CONTRACTOR in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. **Asbestos** - Any material that contains more than one percent (1%) Asbestos and is friable or is releasing Asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. **Bid**- The offer or proposal of the Bidder submitted on the Bid Form/Contract setting forth the prices for the Work to be performed. A Bidder's Bid becomes a Contract with CITY if the CITY executes the Bid Form/Contract submitted by Bidder. If the CITY executes the Bid Form/Contract submitted by Bidder, the term "Bidder" shall mean CONTRACTOR.
 6. **Bidder**- One who submits a Bid directly to CITY, as distinct from a sub-bidder who submits a bid to a Bidder. If the CITY executes the Bid Form/Contract submitted by Bidder, the term "Bidder" shall mean CONTRACTOR in both the Bidding Documents and Contract Documents unless the context clearly indicates otherwise.
 7. **Bidding Documents**- The advertisement or Invitation to Bid, Instructions to Bidders, the Bid Form/Contract, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).
 8. **Bidding Requirements**- The advertisement or invitation to bid, Instructions to Bidders, Bid security, and the Bid Form/Contract with any supplements.
 9. **Bonds**- Payment Bond and Performance and Maintenance Bond and other instruments of security.
 10. **Calendar Day**- Any day shown on the calendar, including Saturdays, Sundays, and holidays.
 11. **Change Order**- A written document issued by CITY that authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Contract.
 12. **CITY/OWNER**- Kansas City, Missouri, a constitutionally chartered municipal corporation, with which CONTRACTOR has entered into the Contract and for whom the Work is to be provided.
 13. **CITY's Representative**- Person or agency designated to act for the Director as provided in these Contract Documents.
 14. **Consultant**- Person, firm or corporation having a contract with CITY or DESIGN PROFESSIONAL to furnish services as an independent professional associate or Consultant with respect to the Project and who's identified as such in the Supplementary Conditions.
- The Consultant(s) is identified and their seals affixed on the Certification Page(s). The certifications describe the respective responsibilities for the Drawings and Specifications prepared by the Consultant(s) and are incorporated into this Contract.

- 15. Contract-** The entire and integrated written agreement between CITY and CONTRACTOR concerning the Work that incorporates all Contract Documents. The Bid Form/Contract submitted by Bidder is the Contract between CITY and CONTRACTOR upon execution by CITY. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
- 16. Contract Documents-** The Contract Documents establish the rights and obligations of the parties and include the Contract, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid Form/Contract (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Intent to Contract), the HRD Construction Project Instructions, the Contractor's Utilization Plan/Request for Waiver, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Project Manual and the certification page(s) of the DESIGN PROFESSIONAL and Consultant(s), together with approved project baseline schedule and amendments thereto and all Written Amendments, Change Orders, Work Change Directives, and DESIGN PROFESSIONAL's written interpretations and clarifications issued on or after the Effective Date of the Contract, and approved Shop Drawings. Reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by CITY to CONTRACTOR are not Contract Documents, except project schedules submitted by CONTRACTOR and approved by CITY.
- 17. Contract Price-** The money payable by CITY to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement.
- 18. Contract Times-** The number of days or the dates stated in the Supplementary Conditions: (a) to achieve Substantial Completion, and (b) to complete the Work so that it is ready for final payment as evidenced by CITY's Representative's written recommendation of final payment.
- 19. Contractor-** The person, firm, partnership, company, corporation or association licensed or otherwise authorized by law to do business in Missouri, with whom CITY has entered into the Agreement.
- 20. Day-** Shall constitute a Calendar Day.
- 21. Design Professional-** Architect, Engineer or other licensed professional employed by or contracted with the ESCO to serve in a design, analysis or project development capacity; or, employed by or contracted with the CITY as a representative to review specific project details. The term Design Professional and its application throughout the Master Agreement shall be clearly defined in each task order under this Master Agreement.

The DESIGN PROFESSIONAL(s) is identified and their seals affixed on the Certification Page(s). The certifications describe the respective responsibilities for the Drawings and Specifications prepared by the DESIGN PROFESSIONAL and are incorporated into this Contract.
- 22. Design Professional's Project Representative-** The authorized representative of DESIGN PROFESSIONAL who may be assigned to the Site or any part thereof.
- 23. Director-** The term "Director" shall mean the duly appointed executive officer of a department of City who is empowered by the City Charter or by the City Council to enter into a contract on behalf of City, or to grant a permit for improvements to land owned by City. A Director is authorized to delegate this authority to a City employee so designated in writing.
- 24. Drawings-** The drawings which graphically show the scope, extent and character of the Work to be furnished and performed by CONTRACTOR and which have been prepared by DESIGN PROFESSIONAL and are included in the Contract Documents. Shop Drawings are not Drawings as so defined.
- 25. Effective Date of the Contract-** The date indicated in the Contract on which it becomes effective, but if no such date is indicated it means the date on which the Contract is fully executed by CITY.
- 26. General Requirements-** Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

- 27. Hazardous Environmental Condition-** The presence at the Site of Asbestos, Lead-Based Paint, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.
- 28. Hazardous Waste-** The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
- 29. Laws or Regulations-** Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.
- 30. Lead-Based Paint-** Any paint, varnish, stain, or other applied coating that has one (1) mg or more of lead per square centimeter. The terms "lead-based paint" and "lead-containing paint" are synonymous with Lead-Based Paint.
- 31. Liens-** Liens, charges, security interests or encumbrances upon real property or personal property.
- 32. Milestone-** A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
- 33. Notice of Intent to Contract-** The written notice by CITY to the apparent successful Bidder stating that upon compliance by that apparent successful Bidder with the conditions in the Bid Documents enumerated, within the time specified, and upon enactment of an appropriate ordinance or resolution, CITY will sign and deliver the Contract.
- 34. Notice to Proceed-** A written notice given by CITY to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR's obligations under the Contract Documents.
- 35. Partial Utilization-** Use by CITY of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.
- 36. PCBs-** Polychlorinated biphenyls.
- 37. Petroleum-** Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes and crude oils.
- 38. Project-** The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.
- 39. Project Manual-** The documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual may be issued in one or more volumes and is contained in the table(s) of contents.
- 40. Radioactive Material-** Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
- 41. Samples-** Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
- 42. Shop Drawings-** All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.
- 43. Site-** Lands or areas indicated in the Contract Documents as being furnished by CITY upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by CITY which are designated for the use of CONTRACTOR.

- 44. Specifications-** Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.
- 45. Subcontractor-** Any individual, firm, partnership, company, corporation or association licensed or otherwise authorized by law to do business in Missouri, to whom CONTRACTOR, with written notification to CITY, has entered into an agreement to perform a part of the Work.
- 46. Substantial Completion-** When Work (or a specified part thereof) has progressed to the point where, in the opinion of DESIGN PROFESSIONAL as evidenced by DESIGN PROFESSIONAL's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
- 47. Supplementary Conditions-** The part of the Contract Documents which amends and/or supplements these General Conditions.
- 48. Supplier-** A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated into the Work by CONTRACTOR or any Subcontractor.
- 49. Underground Facilities-** All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
- 50. Unit Price Work-** Work to be paid for on the basis of unit prices.
- 51. Work-** The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work includes and is the result of performing or furnishing labor, and furnishing and incorporating material and equipment into the construction, and furnishing documents, all as required by the Contract Documents.
- 52. Work Change Directive-** A written directive to CONTRACTOR, issued on or after the Effective Date of the Contract, signed by CITY and recommended by DESIGN PROFESSIONAL, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed, or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.
- 53. Work Day -** Any day during which the CONTRACTOR is able to work a period of six (6) hours or more. Days that are not Work Days are days during which the CONTRACTOR is unable to work for a period of six (6) hours by reason of strikes, boycotts, labor disputes, embargoes, unusual delays in transportation or shortage of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which CONTRACTOR is not responsible or which is not within its control. Saturdays, Sundays, and holidays on which the CONTRACTOR's forces engage in Work requiring the presence of an inspector, will be considered as Work Days.
- 54. Written Amendment-** A written statement modifying the Contract Documents, signed by CITY and CONTRACTOR on or after the Effective Date of the Contract and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

1.02 Terminology

A. Intent of Certain Terms or Adjectives

1. Whenever in the Contract Documents the terms “as ordered,” “as directed,” “as required,” “as allowed,” “as approved,” or terms of like effect or import are used, or the adjectives “reasonable,” “suitable,” “acceptable,” “proper” or “satisfactory” or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of DESIGN PROFESSIONAL as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to DESIGN PROFESSIONAL any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.08 or any other provision of the Contract Documents.

B. Defective

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to CITY’s Representative’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by CITY at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

C. Furnish, Install, Perform, Provide

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of CONTRACTOR, “provide” is implied.

D. Unless stated otherwise in the Contract Documents, words and phrases which have a well-known technical or construction industry or trade meanings are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 PRELIMINARY MATTERS

2.01 Delivery of Bonds

A. CONTRACTOR shall deliver to CITY such Bonds as CONTRACTOR may be required to furnish.

2.02 Evidence of Insurance

A. CONTRACTOR shall deliver to CITY certificates of insurance or other evidence of insurance that CITY may request, which CONTRACTOR is required to purchase and maintain in accordance with Article 5 or any other applicable provision in the Contract Documents.

2.03 Copies of Documents

A. CITY shall furnish to CONTRACTOR one (1) copy of the Drawings and Specifications, including addenda.

2.04 Commencement of Contract Times; Notice to Proceed

A. The Contract Times will commence to run on the date indicated in the Notice to Proceed.

2.05 Starting the Work

A. CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run, but no Work shall be done at the Site prior to the date on which the Contract Times commence to run, unless otherwise indicated in the Notice to Proceed.

2.06 Before Starting Construction

A. CONTRACTOR's Review of Contract Documents: Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to DESIGN PROFESSIONAL any conflict, error, ambiguity or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from DESIGN PROFESSIONAL before proceeding with any Work affected thereby. CONTRACTOR shall not be liable to CITY or DESIGN PROFESSIONAL for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents, unless CONTRACTOR knew or reasonably should have known thereof.

B. Preliminary Schedules: Within ten (10) days after the Effective Date of the Contract, or on such later date as CITY's Representative shall provide in writing, CONTRACTOR shall submit to CITY's Representative for review:

1. Preliminary Project Schedule: CONTRACTOR shall submit a proposed project schedule for CITY's acceptance. The proposed project schedule shall include a detailed and comprehensive construction schedule utilizing a critical path method diagram network that (a) shows all major procurement and construction elements and phases of the Project; (b) breaks down each element or phase by trade; (c) shows early and late starts so that all float time will be accurately identified; (d) all other activities necessary for the timely completion of the Project in accordance with the scheduled dates for Substantial and Final Completion; and (e) highlights the project's critical path. CITY's acceptance is expressly limited to CITY's acknowledgement that, based upon CITY's limited review, the dates of Substantial Completion and Milestone dates are acceptable. After final acceptance of the preliminary project schedule by the CITY, it shall be considered the project baseline schedule pursuant to Paragraph 2.07(B).

2. Preliminary schedule of Shop Drawings and Sample submittals which will list each required submittal and the times for submitting, reviewing and processing such submittal; and

3. Preliminary 01290.02 Schedule of Values for all of the Work which will include quantities and prices of items which when added together equals the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

C. Preconstruction Conference: Before any Work at the Site may be started, a conference attended by CONTRACTOR, DESIGN PROFESSIONAL and others, as appropriate, will be scheduled by CITY's Representative to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.06 B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, maintaining required records, Claims process, dispute resolution or any other applicable provisions of the Contract Documents.

2.07 Acceptable Schedules

A. Acceptable schedule: The Contractor shall update and submit to the CITY for review the preliminary schedule within seven (7) Calendar Days after the Notice to Proceed.

1. The CITY shall review and make any necessary comments and/or adjustments to the updated preliminary schedule. The Contractor shall incorporate the CITY's comments and resubmit the updated preliminary schedule within seven (7) Calendar Days from receipt of the CITY's comments.

B. Project Baseline Schedule: The accepted updated preliminary schedule shall be considered the project baseline schedule and shall be used by the CONTRACTOR for planning, scheduling, managing, and executing the Work. The project baseline schedule shall not be changed without the written consent of CITY. The project baseline schedule may be further modified by the Supplemental Conditions.

C. CONTRACTOR's schedule of values will be acceptable to CITY's Representative as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 CONTRACT DOCUMENTS : INTENT, AMENDING, REUSE

3.01 Intent

A. The Contract Documents comprise the entire Contract between CITY and CONTRACTOR concerning the Work.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for at no additional cost to CITY. Clarifications and interpretations of the Contract Documents shall be issued by DESIGN PROFESSIONAL as provided in Paragraph 9.03.

C. Correlation and intent of documents: The Drawings and Specifications are intended to supplement each other. Any Work shown on the Drawings and not mentioned in the Specifications (or vice versa) shall be as binding and shall be completed the same as if mentioned or shown on both. In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

1. Change Orders and Written Amendments
2. Project Baseline Schedule Requirements
3. Approved Shop Drawings
4. Addenda, with those of later date having precedence over those of earlier date
5. The Supplementary Conditions
6. The General Conditions

7. Drawings and Specifications

In the event of any conflict or inconsistency between the terms of the Master Agreement and a task order under the Master Agreement, the terms of the task order shall govern.

D. In the case of an inconsistency between Drawings and Specifications, the requirements of the Specifications shall govern. If Drawings are in conflict, larger scale details shall govern over smaller or no-scale Drawings. If Specification sections are in conflict with each other, the conflict shall be resolved by DESIGN PROFESSIONAL in accordance with reasonable interpretation of such documents.

E. The general character of the detailed Work is shown on the Drawings, but minor modifications may be made in the full size or scale details. Where the word “similar” occurs on the Drawings, it shall be used in its general sense and not as meaning identical, and all details shall be worked out in relation to their location and their connection to the other parts of the Work. Where on any Drawings a portion of the Work is drawn out and the remainder is indicated in outline, the parts drawn out shall apply also to all other like portions of the Work. Where ornaments or other details are indicated by starting only, such details shall be continued throughout the courses or parts in which they occur and shall also apply to all other similar parts in the Work, unless otherwise indicated.

3.02 Reference to Standards and Specifications of Technical Societies

A. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or on the date of CONTRACTOR’s proposal if there are no Bids), except as may be otherwise specifically stated in the Contract Documents.

1. No provision of any such standard, specification, manual, code or instruction of Supplier shall be effective to change the duties or responsibilities of CITY, CONTRACTOR or DESIGN PROFESSIONAL, or any of their Subcontractors, Consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to CITY or DESIGN PROFESSIONAL or any of their Consultants, agents or employees any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies: If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Laws or Regulations applicable to the performance of the Work or of any standard, specification, manual, code or any instruction of any Supplier referred to in Paragraph 6.07, CONTRACTOR shall report it immediately to DESIGN PROFESSIONAL in writing. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as authorized by Paragraph 6.17) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04; provided, however, that CONTRACTOR shall not be liable to CITY or DESIGN PROFESSIONAL for failure to report any such conflict, error, ambiguity or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

B. Resolving Discrepancies. The provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Contract Documents and:

1. the provisions of any standard, specification, manual, code or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
2. the provisions of any Laws or Regulations applicable to the performance of the Work.

3.04 Amending and Supplementing Contract Documents

A. The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

1. a Written Amendment or
2. a Change Order (pursuant to Article 10), whether pursuant to a Work Change Directive or otherwise.

B. The requirements of the Contract Documents may be supplemented and minor variations and deviations in the Work may be authorized, in one or more of the following ways

1. DESIGN PROFESSIONAL’s approval of a Shop Drawing or Sample (pursuant to Paragraph 6.18), or
2. DESIGN PROFESSIONAL’s written interpretation or clarification (pursuant to Paragraph 9.03).

3.05 Reuse of Documents

A. CONTRACTOR and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under this Contract:

1. shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of DESIGN PROFESSIONAL or Consultant, and
2. shall not reuse any of such Drawings, Specifications, other documents or copies thereof on extensions of the Project or any other project without written consent of CITY, and of DESIGN PROFESSIONAL or Consultant, as applicable, and specific written verification or adaptation by DESIGN PROFESSIONAL or Consultant.

This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude CONTRACTOR from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

4.01 Availability of Lands

A. CITY shall furnish the Site. CITY shall identify any encumbrances or restrictions not of general application but specifically related to use of lands so furnished with which CONTRACTOR will have to comply in performing the Work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by CITY, unless otherwise provided in the Contract Documents. If CONTRACTOR and CITY are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times or both as a result of any delay in CITY's furnishing these lands, rights-of-way or easements, CONTRACTOR may make a Claim as provided in Article 16. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 Subsurface and Physical Conditions

A. **Reports and Drawings:** Reference is made to the Supplementary Conditions for identification of:

1. Subsurface Conditions: Those reports of explorations and tests of subsurface conditions at or contiguous to the Site that have been utilized by DESIGN PROFESSIONAL in preparing the Contract Documents; and
2. Physical Conditions: Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that have been utilized by DESIGN PROFESSIONAL in preparing the Contract Documents.

B. **Limited Reliance by CONTRACTOR on Technical Data Authorized:** CONTRACTOR may rely upon the general accuracy of the technical data contained in reports and drawings of subsurface or physical conditions, but such reports and drawings are not Contract Documents. The technical data is identified in the Supplementary Conditions. Except for reliance on such technical data, CONTRACTOR may not rely upon or make any Claim against CITY, DESIGN PROFESSIONAL or any Consultant with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings, or
3. any CONTRACTOR interpretation of or conclusion drawn from any technical data or any such other data, interpretations, opinions or information.

4.03 Differing Subsurface or Physical Conditions

A. **Notice of Differing Subsurface or Physical Conditions.** If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any technical data on which CONTRACTOR is entitled to rely as provided in Paragraphs 4.02 A and 4.02 B is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.17), notify CITY and DESIGN PROFESSIONAL in writing about such condition(s). CONTRACTOR shall not further disturb such conditions or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. DESIGN PROFESSIONAL's Review: After receipt of notice as required by Paragraph 4.03 A, DESIGN PROFESSIONAL will promptly review the pertinent conditions, determine the necessity for CITY to obtain additional exploration or tests with respect thereto and notify CITY in writing (with a copy to CONTRACTOR) of DESIGN PROFESSIONAL's findings and conclusions.

C. Possible Contract Documents Change: If CITY concludes that a change in the Contract Documents is required as a result of a condition that meets one or more of the categories in Paragraph 4.03 A, a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document the consequences of such change.

D. Possible Price or Times Adjustments: An equitable adjustment in the Contract Price or in the Contract Times, or both, will be allowed to the extent that the existence of a subsurface or physical condition causes an increase or decrease in CONTRACTOR's cost of, or time required for, performance of the Work; subject, however, to the following:

1. the condition must meet any one or more of the categories described in Paragraphs 4.03 A.1 through 4.03 A.4, inclusive;
2. a change in the Contract Documents pursuant to Paragraph 4.03 C will not be an automatic authorization of, nor a condition precedent to, entitlement to any such adjustments;
3. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.06 and 11.04; and
4. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Contract Times if;
 - a. CONTRACTOR knew, or by the exercise of ordinary care could have known, of such conditions at the time CONTRACTOR made a final commitment to CITY with respect to Contract Price and Contract Times by the submission of a Bid; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR's making such final commitment; or
 - c. CONTRACTOR failed to give the written notice as required by Paragraph 4.03 A.

E. If CITY and CONTRACTOR are unable to agree on entitlement to, or magnitude of, an equitable adjustment in the Contract Price pursuant to Article 11 and/or Contract Times pursuant to Article 12, a Claim may be made therefore as provided in Article 16. However, CITY, DESIGN PROFESSIONAL and Consultants shall not be liable to CONTRACTOR for any costs, losses or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all other dispute resolution costs) sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.04. Physical Conditions – Underground Facilities

A. Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to CITY or DESIGN PROFESSIONAL by the owners of such Underground Facilities or by others.

1. CITY and DESIGN PROFESSIONAL shall not be responsible for the accuracy or completeness of any such information or data; and
2. The cost of all of the following will be included in the Contract Price and CONTRACTOR shall have full responsibility for:
 - a. reviewing and checking all such information and data,
 - b. locating all Underground Facilities shown or indicated in the Contract Documents,
 - c. coordination of the Work with the owners of such Underground Facilities during construction, and
 - d. the safety and protection of all such Underground Facilities as provided in Paragraph 6.14 and repairing any damage thereto resulting from the Work.

B. Not Shown or Indicated: If an Underground Facility is uncovered or revealed at or contiguous to the Site, and was not shown or indicated in the Contract Documents, or was shown or indicated incorrectly in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.17), identify the owner of such Underground Facility and give written notice to that owner and to CITY and DESIGN PROFESSIONAL.

C. DESIGN PROFESSIONAL's Review: After receipt of notice as required by Paragraph 4.04 B, DESIGN PROFESSIONAL will promptly review the consequences of the existence of the Underground Facility and notify CITY in writing (with a copy to CONTRACTOR) of DESIGN PROFESSIONAL's findings and conclusions.

D. Possible Contract Documents Change: If CITY concludes that a change in the Contract Documents is required as a result of the existence of an Underground Facility that either was not shown, or was shown incorrectly, in the Contract Documents, a Work Change Directive or Change Order will be issued as provided in Article 10 to reflect and document the consequences of such change.

E. Possible Price or Times Adjustments: An equitable adjustment in the Contract Price or in the Contract Times, or both, will be allowed to the extent that the existence of the Underground Facility causes an increase or decrease in CONTRACTOR's cost of, or time required for, performance of the Work; subject, however, to the following:

1. a change in the Contract documents pursuant to Paragraph 4.04 D will not be an automatic authorization of, nor a condition precedent to, entitlement to any such adjustments;
2. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.06 and 11.04; and
3. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Contract Times if;
 - a. CONTRACTOR knew, or by the exercise of ordinary care could have known, of the existence of the Underground Facility at the time CONTRACTOR made a final commitment to CITY with respect to Contract Price and Contract Times by the submission of a Bid; or
 - b. the existence of the Underground Facility could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR's making such final commitment; or
 - c. CONTRACTOR failed to give the written notice as required by Paragraph 4.04 B.

F. If CITY and CONTRACTOR are unable to agree on entitlement to, or magnitude of, an equitable adjustment in the Contract Price pursuant to Article 11 and/or Contract Times pursuant Article 12, a Claim may be made therefore as provided in Article 16. However, CITY, DESIGN PROFESSIONAL and Consultants shall not be liable to CONTRACTOR for any costs, losses or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all other dispute resolution costs) sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.05 Reference Points

A. CITY shall provide engineering surveys to establish reference points for construction that in DESIGN PROFESSIONAL's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of CITY. CONTRACTOR shall report to DESIGN PROFESSIONAL whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 Asbestos, Lead-Based Paint, PCBs, Petroleum, Hazardous Waste or Radioactive Material

A. Reports and Drawings: Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the DESIGN PROFESSIONAL in the preparation of the Contract Documents.

B. Limited Reliance by CONTRACTOR on Technical Data Authorized: CONTRACTOR may rely upon the general accuracy of the technical data contained in reports and drawings relating to a Hazardous Environmental Condition at the Site, but such reports and drawings are not Contract Documents. Such technical data is identified in the Supplementary Conditions. Except for such reliance on such technical data, CONTRACTOR may not rely upon or make any Claim against CITY, DESIGN PROFESSIONAL or any Consultant with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
3. any CONTRACTOR interpretation of or conclusion drawn from any technical data or any such other data, interpretations, opinions or information.

C. CONTRACTOR shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. CONTRACTOR shall be responsible for all Hazardous Environmental Conditions created with any materials

brought to the Site by CONTRACTOR, Subcontractors, Suppliers, or anyone else for whom CONTRACTOR is responsible. CONTRACTOR shall not be entitled to an extension of the Contract Times or an increase in the Contract Price if CONTRACTOR, Subcontractor, Supplier or anyone for whom CONTRACTOR is responsible created any Hazardous Environmental Condition at the Site or in connection with the Work.

D. If CONTRACTOR encounters a Hazardous Environmental Condition at the Site or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a Hazardous Environmental Condition at the Site, CONTRACTOR shall immediately:

1. secure or otherwise isolate such condition;
2. stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6. 15); and
3. notify CITY and DESIGN PROFESSIONAL (and promptly thereafter confirm such notice in writing). CITY shall promptly consult with DESIGN PROFESSIONAL concerning the necessity for CITY to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. CONTRACTOR shall neither resume Work nor be required to resume Work in connection with such condition or in any affected area until after CITY has obtained any required permits related thereto and delivered to CONTRACTOR written notice:

1. specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or
2. specifying any special conditions under which such Work may be resumed safely. If CITY and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price pursuant to Article 11 and/or Contract Times pursuant to Article 12 as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by CONTRACTOR, a Claim may be made therefore as provided in Article 16.

F. If after receipt of written notice as required in Paragraph 4.06 E, CONTRACTOR does not agree to resume Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under special conditions specified in the notice, then CITY may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If CITY and CONTRACTOR cannot agree as to entitlement to or magnitude of an equitable adjustment in Contract Price pursuant to Article 11 and/or Contract Times pursuant to Article 12 as a result of deleting such portion of the Work, then a Claim may be made therefore as provided in Article 16. CITY may have such deleted portion of the Work performed by CITY's own forces or others in accordance with Article 7.

G. The provisions of Paragraphs 4.02, 4.03, and 4.04 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

H. All materials used, whether new or salvaged, shall be asbestos-free materials. CONTRACTOR shall immediately call to the attention of the CITY's Representative any specified material or product which the CONTRACTOR knows or suspects to contain asbestos, whether new or salvaged.

ARTICLE 5 BONDS AND INSURANCE

5.01 Performance, Payment and Other Bonds

A. CONTRACTOR shall furnish Performance and Maintenance and Payment Bonds, each in an amount at least equal to the Contract Price, as set out in the Contract Documents, as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one (1) year after the date when final payment of the Contract becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Supplementary Conditions.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations. A certified copy of the agent's authority to act must accompany all Bonds signed by an agent.

C. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirement of Paragraph 5.01 B, CONTRACTOR shall within twenty (20) days thereafter substitute another Bond and surety, both of which must be acceptable to CITY.

5.02 Licensed Sureties and Insurers

A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by CITY or CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed in the State of Missouri and in the jurisdiction in which the Project is located, if not in Missouri, to issue Bonds or insurance policies for the limits and coverages so required. All surety and insurance companies shall hold an A.M. Best rating of A-, V, or better.

5.03 Certificates of Insurance

A. CONTRACTOR shall deliver to CITY and DESIGN PROFESSIONAL, prior to the start of any Work at the Project Site, properly completed certificates of insurance or other evidence that the required insurance is in full force and effect, in a form acceptable to CITY. The receipt or acceptance of a certificate of insurance that does not incorporate the required terms and coverage shall not constitute a waiver by the City of the insurance requirements contained in the Contract Documents.

B. All policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by CONTRACTOR in accordance with Paragraphs 5.04 and 5.06 will contain waiver provisions in accordance with Paragraph 5.07 A. The certificates of insurance will contain a provision stating that should any of the policies described in the certificate be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

C. If the coverage afforded is cancelled or changed or its renewal is refused, CONTRACTOR shall give at least thirty (30) days prior written notice to CITY and to each other additional insured to whom a certificate of insurance has been issued.

5.04 CONTRACTOR's Liability Insurance

A. CONTRACTOR shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and furnished, and will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance and furnishing of the Work and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed or furnished by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;
4. claims for damages insured by customary personal injury liability coverage;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefore; and
6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance so required by Paragraph 5.04 A, to be purchased and maintained shall:

1. with respect to insurance required by Paragraphs 5.04 A.3 through 5.04 A.5 inclusive, include as additional insureds (subject to any customary exclusion for professional liability) CITY, DESIGN PROFESSIONAL, Consultants and any other individuals or entities identified in the Supplementary Conditions to be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
2. include at least the specific coverages and be written for not less than the limits of liability provided in Paragraph 5.04 C or required by Laws or Regulations, whichever is greater;
3. include completed operations insurance;
4. include contractual liability insurance covering CONTRACTOR's indemnity obligations;
5. remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be correcting, removing or replacing defective Work in accordance with Paragraphs 13.06 and 13.07;
6. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two (2) years after final payment (and CONTRACTOR shall furnish CITY and each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued evidence satisfactory to CITY and any such additional insured of continuation of such insurance);
7. contain a cross-liability or severability of interest clause or endorsement. Insurance covering the specified additional insureds shall be primary insurance, and all other insurance carried by the additional insureds shall be excess insurance;
8. with respect to commercial automobile liability, commercial general liability, and umbrella liability insurance, CONTRACTOR shall require its insurance carrier(s) to waive all rights of subrogation against CITY, and CITY's officers, directors, partners, employees and agents; and

9. contain a provision or endorsement that the costs of providing the insureds a defense and appeal, including attorneys' fees, as insureds, shall be supplementary and shall not be included as part of the policy limits but shall remain the insurer's responsibility.

C. Specific policies of insurance required by this Paragraph 5.04 shall include:

Workers' Compensation and Employers' Liability Insurance. This insurance shall protect CONTRACTOR against all claims under applicable state workers' compensation laws, including coverage as necessary for the benefits provided under the United States Longshoremen's and Harbor Workers' Act and the Jones Act. CONTRACTOR shall also be protected against claims for injury, disease, or death of employees which, for any reason, may not fall within the provisions of workers' compensation laws. This policy shall include an "all states" or "other states" endorsement. The liability limits shall be not less than:

Workers' Compensation: Statutory

Employers' liability: \$1,000,000 each occurrence

Commercial Automobile Liability Insurance. This insurance shall be occurrence type written in comprehensive form and shall protect CONTRACTOR, and CITY, DESIGN PROFESSIONAL and Consultants against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, either on or off the Project Site, whether they are owned, non-owned, or hired.

The liability limits shall be not less than: \$2,000,000

3. Commercial General Liability Insurance. This insurance shall be occurrence type written in comprehensive form acceptable to CITY. This insurance shall protect CONTRACTOR, and CITY, DESIGN PROFESSIONAL and Consultants as additional insureds, against claims arising from injuries, sickness, disease, or death of any person or damage to property arising out of performance of the Work. The policy shall also include coverage for personal injury liability; contractual liability; completed operations and products liability; and for blasting, explosion, and collapse of buildings; and damage to underground property. The liability limits for bodily injury and property damage shall be not less than:

\$2,000,000 combined single limit for each occurrence

\$2,000,000 general aggregate.

4. The insurer's costs of providing the insureds a defense and appeal as additional insureds, including attorney's fees, shall be supplementary and shall not be included as part of the policy limits but shall remain the insurer's separate responsibility.

5.05 CITY's Liability Insurance

A. In addition to the insurance required to be provided by CONTRACTOR under Paragraph 5.04, CITY, at CITY's option, may purchase and maintain at CITY's expense liability insurance that will protect CITY against claims which may arise from operations under the Contract Documents.

5.06 Property Insurance

A. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall purchase and maintain property insurance on the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws or Regulations). This insurance shall:

1. include the interests of CITY, CONTRACTOR, Subcontractors, and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, tornado, collapse, debris removal, demolition occasioned by enforcement of Laws or Regulations, water damage, damage caused by frost and freezing, and acts of God;

3. be maintained in effect until final payment is made unless otherwise agreed to in writing by CITY with thirty (30) days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. CITY shall not be responsible for purchasing and maintaining any property insurance to protect the interests of CONTRACTOR, Subcontractors or others involved in the Work to the extent of any deductible amounts. The risk of loss within the deductible amounts will be borne by CONTRACTOR, Subcontractor or others suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

5.07 Waiver of Rights

A. CITY and CONTRACTOR intend that all policies purchased in accordance with Paragraphs 5.04 and 5.06 will protect CITY, CONTRACTOR, DESIGN PROFESSIONAL Consultants, Subcontractors, and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds in such policies and will provide primary coverage for all losses and damages caused by the perils covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. CITY and CONTRACTOR waive all rights against each other and their respective officers, directors, partners, employees and agents for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work, but only to the extent of insurance coverage; and, in addition, waive all such rights against DESIGN PROFESSIONAL, Consultants, Subcontractors, and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of any and each of them) under such policies for losses and damages so caused and covered by insurance. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by CITY as trustee or otherwise payable under any policy so issued. None of the above waivers shall apply if specifically in conflict with Laws and Regulations.

5.08 Receipt and Application of Insurance Proceeds

A. Any insured loss under the property insurance will be adjusted with CITY and made payable to CITY as fiduciary for the insureds, as their interests may appear, subject to the requirements of any indentures of indebtedness entered into by CITY.

B. CITY as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object to CITY's exercise of this power in writing within fifteen (15) days after the occurrence of loss. If such objection is made, CITY as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, CITY as fiduciary shall adjust and settle the loss with the insurers.

5.09 Partial Utilization – Property Insurance

A. If CITY finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished in accordance with Paragraph 14.05; provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 CONTRACTOR'S RESPONSIBILITIES

6.01 Indemnification

A. For purposes of this Paragraph 6.01 only, the following terms shall have the meanings listed:

1. Claims means all claims, damages, liability, losses, costs and expenses, including court costs and reasonable attorneys' fees, including attorney's fees incurred by the City in the enforcement of this indemnity obligation.

2. CONTRACTOR'S Agents means CONTRACTOR's officers, employees, sub-consultants, subcontractors, successors, assigns, invitees, and other agents.

3. CITY means CITY, its Program Manager/Construction Advisor and any of their agents, officials, officers, employees and program managers or construction advisors.

B. CONTRACTOR's obligations under this Paragraph with respect to indemnification for its negligent acts or omissions, shall be limited to the coverage and limits of insurance that CONTRACTOR is required to procure and maintain under this Contract. CONTRACTOR affirms that it has had the opportunity to recover the costs of the liability insurance required in this Contract in its contract price.

C. CONTRACTOR shall defend, indemnify and hold harmless CITY from and against all Claims arising out of or resulting from negligent acts or omissions in connection with this Contract caused in whole or in part by CONTRACTOR or CONTRACTOR's Agents.

D. In any and all Claims against CITY, DESIGN PROFESSIONAL, CONSULTANT, or any of their respective agents, officers, directors or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.01 C shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits

payable by or for CONTRACTOR or any such Subcontractor, Supplier or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.

E. The indemnification obligations of CONTRACTOR under Paragraph 6.01 C shall not extend to liability arising out of, resulting from, or caused by the professional negligence, errors or omissions of DESIGN PROFESSIONAL, CONSULTANT, or any of their respective agents, officers, directors or employees.

6.02 Supervision and Superintendence

A. CONTRACTOR shall supervise, inspect and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of others in the design or specification of a specific means, method, technique, sequence or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

B. At all times during the progress of the Work, CONTRACTOR shall assign a competent resident superintendent of the Work, who shall not be replaced without written request to and approval by CITY except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the Site and shall have authority to act on behalf of CONTRACTOR. All communications given to or received from the superintendent shall be binding on CONTRACTOR.

C. If it is determined to be in the best interest of the Work, CONTRACTOR shall replace the project manager, resident superintendent or any other employee of the CONTRACTOR, Subcontractors, Suppliers or other persons or organizations performing or furnishing any of the Work on the project upon written request by the CITY.

6.03 Services, Working Hours, Labor, Materials and Equipment

A. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out and construct or perform the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the Site. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the Site shall be performed during regular working hours. CONTRACTOR shall not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without CITY's written consent given after prior written notice to DESIGN PROFESSIONAL.

B. Unless otherwise specified in Division 1, General Requirements, CONTRACTOR shall furnish and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

C. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of CITY. If required by DESIGN PROFESSIONAL, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

D. It is the policy of the CITY that any manufactured goods or commodities used or supplied in the performance of this Contract and any subcontract hereto shall be manufactured or produced in the United States whenever possible.

6.04 Progress Schedule

A. CONTRACTOR shall adhere to the progress schedule established in accordance with Article 2 as it may be adjusted from time to time as provided below:

1. CONTRACTOR shall provide, at least once every thirty (30) calendar days, updated information on the project schedule, including thirty (30) day look ahead schedules, projected variances per event category and per Subcontractor, identification of all variances and calculation of the number of Days difference between the as-built critical path and the project schedule critical path

2. CONTRACTOR shall, with each application for payment, provide completed monthly updated status report for the previous month on the project schedule and updated information indicating as-built and as-planned conditions. The updated information on the project schedule shall not modify any Milestone dates in the project schedule that CITY has previously approved. The updated information required is a condition precedent to payment pursuant to paragraph 14.02 and shall include at a minimum:

- a. a concise statement of the outlook for meeting project schedule dates and the reasons for any change in outlook from the previous report;
- b. a review of any significant technical problems encountered during the month;
- c. an explanation of any corrective action taken or proposed; and
- d. a summary of any Claims anticipated by CONTRACTOR with respect to the Work, including the anticipated costs and schedule impacts of any such Claims.

6.05 Recovery Schedules

A. If the CONTRACTOR should:

1. fail, refuse or neglect to supply a sufficient number of workers or to deliver the materials or equipment with such promptness as to prevent the delay in the progress of the Work;
2. fail in any respect to commence and diligently prosecute the Work in accordance with the approved baseline project schedule in order to achieve substantial completion;
3. fail to commence, prosecute, finish, deliver or install the different portions of the Work on time as specified in the approved baseline project schedule; or
4. fail in the performance of any of the material covenants of the Contract Documents;

CITY shall have the right to direct the CONTRACTOR, upon seven (7) calendar days' notice, to prepare a written recovery plan, for CITY's approval, to accelerate the Work in order to conform to the approved baseline project schedule, including, without limitation, providing additional labor or expediting delivery of materials, performing overtime or re-sequencing the Work without adjustments to the Contract value. Upon CITY's approval of the recovery plan, CONTRACTOR shall accelerate the Work in accordance with the plan.

B. Proposed recovery schedules shall be submitted to the CITY as a separate project plan for review and approval by CITY prior to incorporation into the approved baseline schedule. The recovery schedule shall be submitted in a format compatible with the baseline schedule format. Each proposed revision shall be submitted as a separate schedule, with the following minimum requirements:

1. A critical path method diagram showing revised and affected activities or Milestones.
2. An activity report for all revised and affected activities or Milestones.

C. Upon acceptance of the recovery schedule by CITY, data shall be added or revised for all new or revised activities and incorporated into the approved baseline project schedule.

6.06 Substitutes and "Or-Equal" Items

A. Materials or equipment: Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance and quality required. Unless the specification or description contains, or is followed by, words reading that no like, equivalent or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to CITY for review by CITY's Representative under the following circumstances:

1. "Or-Equal": If, prior to receipt of Bids, Bidder proposes an item of material or equipment as functionally equal to that named and sufficiently similar so that no change in related Work will be required, CITY's Representative may request DESIGN PROFESSIONAL to consider it as an "or-equal" item. DESIGN PROFESSIONAL will review and recommend the acceptance, or rejection, of the proposed item to the CITY's Representative. For the purposes of this Paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment DESIGN PROFESSIONAL determines that:

- (1) it is at least equal in quality, durability, appearance, strength, and design characteristics; and
- (2) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole; and

b. Bidder certifies that:

(1) there is no increase in cost to the CITY; and

(2) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

If the CITY's Representative approves the proposed item, it may be accepted by CITY.

2. Substitute Items: If CONTRACTOR proposes an item of material or equipment as a substitute item, then CONTRACTOR shall submit sufficient information as provided below to allow CITY's Representative to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefore. The

procedure for review by the CITY's Representative will include the following as supplemented in the General Requirements and as CITY's Representative may determine is appropriate under the circumstances:

a. Requests for review of proposed substitute items of material or equipment will not be accepted by CITY's Representative from anyone other than CONTRACTOR.

b. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall first make written application to CITY's Representative for acceptance thereof.

c. In the application, CONTRACTOR shall certify that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified and be suited to the same use as that specified. The application will state the extent, if any, to which the evaluation and acceptance of the proposed substitute will impact CONTRACTOR's achievement of Substantial Completion, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with CITY for work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty.

d. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which will be considered by CITY's Representative in evaluating the proposed substitute. CITY's Representative may require CONTRACTOR to furnish additional data about the proposed substitute.

If the CITY's Representative approves the proposed item, CITY may accept it.

B. Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to DESIGN PROFESSIONAL. CONTRACTOR shall notify CITY and submit sufficient information to allow DESIGN PROFESSIONAL, in DESIGN PROFESSIONAL's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents.

C. Expenses: Bidder shall provide all data in support of any "or equal" at Bidder's expense, and CONTRACTOR shall provide all data in support of any proposed substitute at CONTRACTOR's expense.

D. Evaluation: DESIGN PROFESSIONAL and CITY's Representative will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.06 A, and 6.06 B. CITY will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized without CITY's prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. CITY may require CONTRACTOR to furnish at CONTRACTOR's expense, a special performance guarantee or other surety with respect to any "or-equal" substitute. DESIGN PROFESSIONAL will record time required by DESIGN PROFESSIONAL and Consultants in evaluating substitutes proposed or submitted by CONTRACTOR pursuant to Paragraphs 6.06 A and 6.06 B and in making changes in the Contract Documents (or in the provisions of any other direct contract with CITY for work on the Project) occasioned thereby. Whether or not CITY accepts a substitute so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse CITY for the reasonable charges of DESIGN PROFESSIONAL and Consultants for evaluating each such proposed substitute.

6.07 Concerning Subcontractors, Suppliers and Others

A. CONTRACTOR shall not employ or retain any Subcontractor, Supplier or other person or organization (including those acceptable to CITY as indicated in Paragraph 6.07 B), whether initially or as a substitute, against whom CITY has a reasonable objection, including but not limited to debarment by City or another governmental entity or decertification of the Subcontractor from the City's Minority and Women's Business Enterprise Program as a result of the Subcontractor's failure to comply with any of the requirements of the provisions of Chapter 3 of the City's Code as determined by the Director of the Human Relations Department. Contractor shall insert this provision in any subcontractor agreement associated with this Contract. CONTRACTOR shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection. CONTRACTOR shall submit required information for all Subcontractors on Form 01290.09 - Subcontractor and Major Material Suppliers List, provided in these Contract Documents, prior to Subcontractor beginning Work at the Site.

B. The Supplementary Conditions require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials or equipment) to be submitted to CITY on or before the date specified in the Supplementary Conditions, for acceptance by CITY. If CONTRACTOR has submitted a list

thereof in accordance with the Supplementary Conditions, CITY may accept (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Contract Documents) any such Subcontractor, Supplier or other person or organization so identified, or may reject same on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable replacement for the rejected Subcontractor, Supplier or other person or organization. The Contract Price will be adjusted by the difference in the cost occasioned by such substitution, and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by CITY of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of CITY or DESIGN PROFESSIONAL to reject defective Work.

C. CONTRACTOR shall be fully responsible to CITY for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier or other person or organization any contractual relationship between CITY or DESIGN PROFESSIONAL and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of CITY or DESIGN PROFESSIONAL to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws or Regulations.

D. CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR.

E. CONTRACTOR shall contractually require all Subcontractors, Suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with CITY and DESIGN PROFESSIONAL through CONTRACTOR.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for CONTRACTOR by a Subcontractor or Supplier shall be pursuant to an appropriate written agreement between CONTRACTOR and the Subcontractor or Supplier that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of CITY. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in Paragraph 5.06, the agreement between the CONTRACTOR and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against CITY, CONTRACTOR, DESIGN PROFESSIONAL, Consultants and all other additional insureds for all losses and damages caused by, arising out of or resulting from any perils, to the extent covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

Except as otherwise provided in this subsection H and in accordance with the provisions of subsection C hereof, the agreement between CONTRACTOR and the Subcontractor or Supplier referred to in subsection G, shall provide that the CONTRACTOR and the Subcontractor or Supplier agree not to request CITY or CITY's Representative to intervene in or facilitate the resolution of claims or contract disputes arising out of or related to the agreement between CONTRACTOR and the Subcontractor or Supplier. Furthermore, the Contracts between CONTRACTOR and Subcontractors or Suppliers shall provide that all unresolved claims and disputes between CONTRACTOR and the Subcontractor or Supplier that remain unresolved after thirty (30) calendar days from the notice of claim, shall be subject to mediation as a condition precedent to the institution of legal proceedings by either party. Any such mediation shall be conducted in accordance with the CITY's Code Section 3-467.

CONTRACTOR shall not insert any provision in any subcontractor agreement associated with this Contract that explicitly states or implies that the subcontractor shall only be paid for work performed if or when the general CONTRACTOR is paid by the CITY. Contractor's compliance with this provision is a material term of this Contract.

CONTRACTORS shall not deny any Subcontractor subcontracting opportunities solely because the Subcontractor is not a signatory to collective bargaining agreements with organized labor.

6.08 Patent Fees and Royalties

A. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation into the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract

Documents for use in the performance of the Work, and if to the actual knowledge of CITY or DESIGN PROFESSIONAL its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by CITY in the Contract Documents. To the fullest extent permitted by Laws or Regulations, CONTRACTOR shall defend, indemnify and hold harmless CITY, DESIGN PROFESSIONAL, Consultants and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation into the Work of any invention, design, process, product or device not specified in the Contract Documents.

6.09 Permits

A. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. CITY shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Contract. CONTRACTOR shall pay all charges of utility owners for connections to the Work.

CONTRACTOR, at its own expense, shall comply with all Federal, State and local laws and regulations, including, but not limited to the Missouri Clean Water Law (Chapter 644 RSMo) together with any accompanying regulation(s) contained in the Missouri Code of State Regulations (CSR Title 10), as well as any implementing permits, together with any CITY Provisions during the life of this Contract including but not limited to:

1. Approvals and permits as required for construction or land disturbance activities.
2. Compliance with the State of Missouri – Department of Natural Resources (“MDNR”) Missouri State Operating Permit (“Land Disturbance Permit”), MO-R100006 for all construction or land disturbance activity.
3. Development and implementation of a Storm Water Pollution Prevention Plan (SWPPP).
 - (a) Contractor shall not commence land disturbance activity until the initial SWPPP has been finalized.
 - (b) Preparation and submittal of all applications, documentation and exhibits required to obtain MDNR approvals for uninterrupted Work at the Site.
 - (c) Amending/Updating SWPPP.
 - (d) Site Inspections and submittal of Inspection Reports
 - (e) Proper Operation and Maintenance to achieve compliance with the terms of the Permit.
 - (f) Maintenance of required records in accordance with MDNR requirements and requirements included in Article 6 of these Contract Documents.

4. In addition to requirements of Article 6, Contractor shall also provide record access to Missouri Department of Natural Resources (MDNR).

5. Failure to control erosion and water pollution is a permit violation. CONTRACTOR shall have 24 hours after receiving notice of the violation to correct the problem. If the CONTRACTOR fails to correct the problem after the time prescribed, the City will hire a remediation expert to fix the problem. In such an event, the CONTRACTOR shall be liable to the City for the remediation costs plus a 10% mark-up of the total contract price. If the CONTRACTOR receives three (3) notices of violation of the erosion control plan and the City’s MS4 permit, the Director may issue a stop work order and delay any payment until control measures are properly functioning and stream damage has been mitigated. In such an event, any delay to the project schedule will result in liquidated damages assessed against the CONTRACTOR.

6.10 Compliance with Laws and Regulations

A. CONTRACTOR shall give all notices and comply with all Laws or Regulations applicable to furnishing and performing the Work. Except where otherwise expressly required by applicable Laws or Regulations, neither CITY nor DESIGN PROFESSIONAL shall be responsible for monitoring CONTRACTOR’s compliance with any Laws or Regulations. The Laws or Regulations included in this Paragraph shall include, but not be limited to, those set forth in the Supplementary Conditions.

B. **Failure to Comply.** If CONTRACTOR performs any Work in violation of applicable Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting therefrom; however, it shall not be CONTRACTOR’s primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws or Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR’s obligations under Paragraph 3.03.

C. Conflicts of Interest. The provisions of City's Code Sections 2-1015 and 3-301, prohibiting City officers and employees from having a financial or personal interest in any contract with City, and Code Sections 3-307, and 3-309, imposing sanctions for violations, shall apply to this Contract. CONTRACTOR certifies that no officer or employee of City has, or will have, a direct or indirect financial or personal interest in this Contract, and that no officer or employee of City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement concerning employment to perform services on behalf of CONTRACTOR on this Contract.

D. Licenses and Permits. CONTRACTOR, at its own expense, shall secure or cause to be secured all licenses and permits from public or private sources necessary for the fulfillment of its obligations under this Contract. All references in this Contract to the "Code" shall mean City's Code of Ordinances, including any amendments thereto or re-codification thereof unless the context clearly indicates otherwise. CONTRACTOR shall obtain copies of all necessary licenses and permits from Subcontractors required for the Work before Subcontractors begin Work at the Site. CONTRACTOR shall retain such evidence in its files and make available to CITY within ten (10) days after CITY's written request.

E. Americans with Disabilities Act. CONTRACTOR agrees to comply, during the course of this Contract, with all provisions of Title II of the 2010 ADA Standards for Accessible Design as amended from time to time.

F. Affirmative Action. If the Contract Price exceeds \$300,000.00 and CONTRACTOR employs fifty (50) or more people, CONTRACTOR shall comply with City's Affirmative Action requirements in accordance with the provisions of Chapter 3 of City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto. CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 3 of City's Code.

CONTRACTOR shall:

1. Submit, in print or electronic format, a copy of CONTRACTOR'S current certificate of compliance to the City's Human Relations Department (HRD) prior to receiving the first payment under the contract, unless a copy has already been submitted to HRD at any point within the previous two calendar years. If, and only if, CONTRACTOR does not possess a current certification of compliance, CONTRACTOR shall submit, in print or electronic format, a copy of its affirmative action program to HRD prior to receiving the first payment under the contract, unless a copy has already been submitted to HRD at any point within the previous two calendar years.

2. Require any Subcontractor awarded a subcontract exceeding \$300,000.00 to affirm that Subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.

3. Obtain from any Subcontractor awarded a subcontract exceeding \$300,000.00 a copy of the Subcontractor's current certificate of compliance and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed. If, and only if, Subcontractor does not possess a current certificate of compliance, CONTRACTOR shall obtain a copy of the Subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed.

City has the right to take action as directed by City's Human Relations Department to enforce this provision. If CONTRACTOR fails, refuses or neglects to comply with the provisions of Chapter 3 of City's Code, then such failure shall be deemed a total breach of this Contract and this Contract may be terminated, canceled or suspended, in whole or in part, and CONTRACTOR may be declared ineligible for any further contracts funded by City for a period of one (1) year. This is a material term of this Contract.

G. Minority and Women Business Enterprises and Workforce. City is committed to ensuring that minorities and women participate to the maximum extent possible in the performance of City's construction contracts. If minority and women business enterprise (M/WBE) goals have been set for this Contract, CONTRACTOR agrees to comply with all requirements of City's Minority and Women's Business Enterprise Program as enacted in City's Code, Sections 3-421 through 3-469 and as hereinafter amended. CONTRACTOR shall meet or exceed both the MBE and WBE goals set forth in its Contractor Utilization Plan/Request for Waiver. If workforce utilization goals are applicable to this Contract, CONTRACTOR agrees to comply with all requirements of City's Construction Employment Program as enacted in City's Code, Sections 3-501 through 3-525 and as hereinafter amended. CONTRACTOR shall meet or exceed the construction employment goals unless the same shall have been waived in the manner provided by law. CONTRACTOR's compliance with this provision is a material part of this Contract.

H. Records.

1. For purposes of this section:

(a) "City" shall mean the City Auditor, the City's Internal Auditor, the City's Director of Human Relations, the City Manager, the City department administering this Contract and their delegates and agents.

(b) "Record" shall mean any document, book, paper, photograph, map, sound recordings or other material, regardless of physical form or characteristics, made or received in connection with this Contract and all Contract amendments and renewals.

2. Contractor shall maintain and retain all Records for a term of five (5) years that shall begin after the expiration or termination of this Contract and all Contract amendments. City shall have a right to examine or audit all Records and Contractor shall provide access to City of all records upon ten (10) days written notice from the City.

I. Prevailing Wage.

1. CONTRACTOR shall comply and require its Subcontractors to comply with;

a. sections 290.210 to 290.340, RSMO the State of Missouri Prevailing Wage Law (the "Law"); and

b. 8 CSR 30-3.010 to 8 CSR 30-3.060, the Prevailing Wage Law Rules (the "Rules"); and

c. the Annual Wage Order (Wage Order) issued by the State of Missouri's Department of Labor and Industrial Relations; and

d. any applicable Annual Incremental Wage Increase (Wage Increase) to the Annual Wage Order.

2. The Law, Rules, Annual Wage Order and any Wage Increase are incorporated into and made part hereof this Contract and shall be collectively referred to in this Section as the "Prevailing Wage Requirements."

3. CONTRACTOR shall pay and require its Subcontractors to pay to all workers performing work under this Contract not less than the prevailing hourly rate of wages for the class or type of work performed by the worker in accordance with the Law, Rules, Wage Order and any applicable Wage Increase. CONTRACTOR shall take whatever steps are necessary to insure that the prevailing hourly wage rates are paid and that all workers for CONTRACTOR and each of its Subcontractors are paid for the class or type of work performed by the worker in accordance with the Prevailing Wage Requirements. If CONTRACTOR shall fail to start to perform CONTRACTOR's obligations under the Contract Documents within sixty (60) days from the Effective Date of the Contract, CONTRACTOR and each of its subcontractors shall be obligated to pay all workers in accordance with any new Wage Order, as subsequently amended by any applicable Wage Increase, issued by the Department of Labor and Industrial Relations within the aforementioned sixty (60) day period. The new Wage Order and any applicable Wage Increase shall govern notwithstanding the fact that the Wage Order being replaced might be physically attached or incorporated in the Contract Documents.

4. Prior to each of its Subcontractors beginning Work on the Site, CONTRACTOR shall require each Subcontractor to complete CITY's Form 00490 entitled "Pre-contract Certification" that sets forth the Subcontractor's prevailing wage and tax compliance history for the two (2) years prior to the bid. CONTRACTOR shall retain one (1) year and make the Pre-Contract Certifications available to CITY within five (5) days after written request.

5. CONTRACTOR shall:

Keep and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to keep full and accurate records on City's "Daily Labor Force Report" Form indicating the worker's name, occupational title or classification group & skill and the workers' hours. City shall furnish blank copies of the Daily Labor Force Report Form to Contractor for its use and for distribution to Subcontractors. Contractor shall submit its and its Subcontractors Daily Labor Force Reports to City each day; and

Submit, and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to submit electronically, in a format prescribed by the City, Certified Payroll Report Information indicating the worker's name, address, social security number, occupation(s), craft(s) of every worker employed in connection with the public work together with the number of hours worked by each worker and the actual wages paid in connection with the Project and other pertinent information as requested by the City; and

Submit, and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to submit, electronically, in format prescribed by the City, a Payroll Certification. The Payroll Certification must be signed by the employee or agent who pays or supervises the payment of the workers employed under the Contract for the Contractor and each Subcontractor; and

d. The Daily Labor Force Report, documents used to compile information for the Certified Payroll Report, and Payroll Certification are collectively referred to in this Section as the "Records."

6. CONTRACTOR shall submit its and its Subcontractors Daily Labor Force Reports to CITY each day. CONTRACTOR shall make all of CONTRACTOR's and Subcontractors' Records open to inspection by any authorized representatives of OWNER and the Missouri Department of Labor and Industrial Relations at any reasonable time and as often as they may be necessary and such Records shall not be destroyed or removed from the State of Missouri for a period of one (1)

year following the completion of the public work in connection with which the Records are made. CONTRACTOR shall have its and its Subcontractors Certified Payroll Reports and Payroll Certifications available at the CONTRACTOR's office and shall provide the Records to the City electronically at City's sole discretion. In addition, all Records shall be considered a public record and CONTRACTOR shall provide the Records to the CITY in the format required by the CITY within three (3) working days of any request by CITY at the CONTRACTOR's cost. CITY, in its sole discretion, may require CONTRACTOR to send any of the Records directly to the person who requested the Record at CONTRACTOR's expense.

7. CONTRACTOR shall post and keep posted a clearly legible statement of all prevailing hourly wage rates to be paid to all workers employed by CONTRACTOR and each of its Subcontractors in the performance of this Contract in a prominent and easily accessible place at the Site of the Work by all workers.

8. If the Contract Price exceeds \$250,000.00, CONTRACTOR shall and shall require each Subcontractor engaged in any construction of public works to 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 during the time the CONTRACTOR or Subcontractor is engaged on the project. The sign shall be legible from a distance of twenty (20') feet, but the size of the lettering need not be larger than two (2") inches. In cases where equipment is leased or where affixing a legible sign to the equipment is impractical, the CONTRACTOR may place a temporary stationary sign, with the information required pursuant to this section, at the main entrance of the Project in place of affixing the required information on the equipment so long as such sign is not in violation of any state or federal statute, rule or regulation. Motor vehicles which are required to have similar information affixed thereto pursuant to requirements of a regulatory agency of the state or federal government are exempt from the provisions of this subsection.

9. CONTRACTOR must correct any errors in CONTRACTOR's or any Subcontractors' Records, or CONTRACTOR's or any Subcontractors' violations of the Law, Rules, Annual Wage Order and any Wage Increase within fourteen (14) calendar days after notice from CITY.

10. CONTRACTOR shall and shall require its Subcontractors to cooperate with the CITY and the Department of Labor and Industrial Relations in the enforcement of this Section, the Law, Rules, Annual Wage Order and any Wage Increase. Contractor shall and shall require its Subcontractors to permit CITY and the Department of Labor and Industrial Relations to interview any and all workers during working hours on the Project at CONTRACTOR's sole cost and expense.

11. CONTRACTOR shall file with CITY, upon completion of the Project and prior to final payment therefore, affidavits from CONTRACTOR and each of its Subcontractors, stating that each has fully complied with the provisions and requirements of the Missouri Prevailing Wage Law. CITY shall not make final payment until the affidavits, in proper form and order, from CONTRACTOR and each of its Subcontractors, are filed by CONTRACTOR.

12. CONTRACTOR shall forfeit as a statutory penalty to the CITY one hundred dollars (\$100.00) for each worker employed, for each calendar day, or portion thereof, such worker is paid less than the prevailing hourly rates for any work done under this Contract, by CONTRACTOR or by any of CONTRACTOR's Subcontractors. If CONTRACTOR or any of its Subcontractors have violated any section(s) of 290.210 to 290.340, RSMo, in the course of the execution of the Contract, CITY shall, when making payments to the CONTRACTOR becoming due under this Contract, withhold and retain therefrom all sums and amounts due and owing as a result of any violation of sections 290.210 to 290.340, RSMo.

J. Prevailing Wage Damages. CONTRACTOR acknowledges and agrees that, based on the experience of CITY, violations of the Missouri Prevailing Wage Act, whether by CONTRACTOR or its Subcontractors, commonly result in additional costs to CITY. CONTRACTOR agrees that additional costs to CITY for any particular violation are difficult to establish and include but are not limited to: costs of construction delays, additional work for CITY, additional interest expenses, investigations, and the cost of establishing and maintaining a special division working under the City Manager to monitor prevailing wage compliance.

1. In the event of the failure by CONTRACTOR or any of its Subcontractors to pay wages as provided in the Missouri Prevailing Wage Act, CITY shall be entitled to deduct from the Contract Price, and shall retain as liquidated damages, one hundred dollars (\$100.00) per day, per worker who is paid less than the prevailing hourly rate of wages, to approximate the additional costs. The sum shall be deducted, paid or owed whether or not the Contract Times have expired.

2. CITY shall give written notice to CONTRACTOR setting forth the workers, who have been underpaid, the amount of the statutory penalty and the amount of the liquidated damages as provided for in this Subparagraph J. CONTRACTOR shall have fourteen (14) calendar days to respond, which time may be extended by CITY upon written request. If CONTRACTOR fails to respond within the specified time, the CITY's original notice shall be deemed final. If CONTRACTOR responds to

CITY's notice, CITY will furnish CONTRACTOR a final decision in writing within five (5) days of completing any investigation.

K. Missouri Secretary of State Business Entity Registration. CONTRACTOR shall obtain from all Subcontractors for the Project, a copy of their current certificate of good standing or fictitious name registration from the Missouri Secretary of State before they begin work on the Site. CONTRACTOR shall retain such documents in its files and make available to CITY within ten (10) days after written request.

L. Tropical Hardwoods. The provisions of Code Section 2-1872, restricting the use of tropical hardwoods, shall apply to this Contract.

M. Preference for Missouri Products. Pursuant to Section 71.140 RSMo., preference shall be given to materials, products, supplies and all other articles produced, manufactured, made or grown within the State of Missouri.

N. Guidelines for Open Excavations.

1. CONTRACTOR shall restore required excavations to the level of the adjacent surfaces as soon as practicable. Unsupervised open excavations on public properties are discouraged at all times. If CONTRACTOR, in performance of the Work, makes or causes to be made any excavation in, upon, under, through or adjoining any street, sidewalk, alley, park, boulevard, parkway or any other public properties, and shall leave any part or portion thereof open, CONTRACTOR shall provide effective protection to the public.

2. CONTRACTOR shall protect and secure all excavations in roadways in compliance with existing federal, state and local codes and standards, including, but not limited to the most current edition of the Manual of Uniform Traffic Control Devices. CONTRACTOR shall protect and secure all unsupervised excavations not within roadways, either by covering or fencing.

a. Covering. A protective cover that can sustain the weight of persons or of objects that are placed upon it may be installed over an unsupervised excavation. The cover shall be secured to the ground to prevent movement. Protective covers shall have no opening(s) or protuberance(s) of sufficient size to cause a fall and/or injury. Advance warning devices shall be installed as necessary.

b. Fencing. Fencing to prevent entry may be installed surrounding an unsupervised excavation not protectively covered in its entirety. The fencing shall be a minimum of 42" in height. The fencing shall be constructed in such a manner that it is adequately secured and will remain upright at all times under normal Site conditions. All protective coverings and fences over and around excavations shall be inspected at least daily to assure integrity. Protective coverings and/or fences in heavily trafficked areas shall be inspected more often as necessary.

O. Notification of Utilities. CONTRACTOR shall adhere to the provisions of Sections 319.010 et seq., RSMo., which requires that a person or firm making an excavation in any public street, road or alley, right of way dedicated to public use, utility easement of record, or within any private street or private property do so only after giving notice to, and obtaining information from, owners of Underground Facilities. The 24-hour, toll-free accident prevention hotline number in Missouri is 1-800-344-7483 (1-800-Digrite).

P. Employee Eligibility Verification. CONTRACTOR shall adhere to the provisions of Sections 285.525 et seq., RSMo., which requires that for any contract exceeding five thousand dollars (\$5,000.00), CONTRACTOR shall execute and submit an affidavit, in a form prescribed by CITY, affirming that CONTRACTOR does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S.C. § 1324a(h)(3). CONTRACTOR shall attach to the affidavit documentation sufficient to establish CONTRACTOR'S enrollment and participation in an electronic verification of work program operated by the United States Department of Homeland Security (E-Verify) or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986. CONTRACTOR may obtain additional information about E-Verify and enroll at <https://e-verify.uscis.gov/enroll/StartPage.aspx?JS=YES>. For those Contractors enrolled in E-Verify, the first and last pages of the E-Verify Memorandum of Understanding that CONTRACTOR will obtain upon successfully enrolling in the program shall constitute sufficient documentation for purposes of complying with this Section. CONTRACTOR shall submit the affidavit and attachments to CITY prior to execution of the Contract, or at any point during the term of the Contract if requested by City.

Q. OSHA 10-Hour Training Requirement. CONTRACTOR and any subcontractor working under this Contract shall require every employee on the Site to complete a ten-hour construction safety program which meets the requirements of Section 292.675, RSMo, except for those employees who shall have previously completed the required program and hold documentation to that effect. CONTRACTOR shall remove or require the removal of any person from the Site who is subject to this requirement and who does not complete or is unable to produce documentation of their successful completion of the

required program within the time limitations prescribed by Section 292.675, RSMo. CONTRACTOR shall forfeit the sum of two thousand five hundred dollars (\$2,500.00), in addition to one hundred dollars (\$100.00) per employee each calendar day, or portion thereof, the employee(s) shall continue to be employed without having completed the required program within the time limitations prescribed by Section 292.675, RSMo. CITY shall be entitled to withhold and retain any amounts due and owing hereunder when making payment to CONTRACTOR.

Clean Air Act and Clean Water Act. CONTRACTOR shall comply with requirements of the Clean Air Act (42 U.S.C. 7401 *et seq.*); Clean Water Act (33 U.S.C. 1251 *et seq.*), Missouri Clean Water Law (Chapter 644 RSMo), Code of Federal regulations (Title 40: Protection of Environment, Title 33: Navigation and Navigable Waters) and the rules of the Missouri Code of State Regulations (CSR Title 10).

Contract information Management System. If applicable, CONTRACTOR shall comply with CITY's Contract Information Management System requirements. CONTRACTOR shall use CITY's Internet web based Contract Information Management System/Project Management Communications Tool provided by CITY and protocols included in that software during the term of this Contract. CONTRACTOR shall maintain user applications to CITY's provided system for all personnel, subcontractors or suppliers as applicable and shall require subcontractors/subconsultants to maintain same.

T. Anti-Discrimination Against Israel. If this Contract exceeds \$100,000.00 and CONTRACTOR employs at least ten employees, pursuant to Section 34.600, RSMo., by executing this Contract, CONTRACTOR certifies it is not currently engaged in and shall not, for the duration of this contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.

6.11 Taxes

A. CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws or Regulations of the place of the Project which are applicable during the performance of the Work.

B. Tax Compliance.

1. As a condition precedent to CITY making its first payment to CONTRACTOR under this Contract, CONTRACTOR shall furnish to CITY sufficient proof from City's Commissioner of Revenue, dated not more than one (1) year prior to the date provided to CITY, verifying that CONTRACTOR is in compliance with the license and tax ordinances administered by City's Revenue Division of the Finance Department.

2. As a condition precedent to Subcontractors performing any Work under this Contract, CONTRACTOR shall obtain from Subcontractor sufficient proof from City's Commissioner of Revenue, dated not more than one (1) year before the date Subcontractor begins Work, verifying that the Subcontractor is in compliance with the license and tax ordinances administered by City's Revenue Division of the Finance Department. CONTRACTOR shall retain such documentation in its files and make available to CITY within ten (10) days after a written request.

3. As a condition precedent to CITY making final payment under this Contract, if this Contract is longer than one (1) year and exceeds the dollar threshold established by ordinance and included in the Supplementary Conditions, CONTRACTOR shall furnish to CITY sufficient proof from City's Commissioner of Revenue, dated not more than one (1) year before the filing of a final Application for Payment, verifying that CONTRACTOR is in compliance with the license and tax ordinances administered by City's Revenue Division of the Finance Department.

4. If this Contract is longer than one (1) year and exceeds the dollar threshold established by ordinance and included in the Supplementary Conditions, CONTRACTOR shall obtain from Subcontractors sufficient proof from City's Commissioner of Revenue, dated not more than one (1) year before the date of CONTRACTOR's final payment to the Subcontractor, that the Subcontractor was or is in compliance with the license and tax ordinances administered by City's Revenue Division of the Finance Department. CONTRACTOR shall retain such documentation in its files and make available to CITY within ten (10) days after written request.

5. If, at the time of final payment to CONTRACTOR, CONTRACTOR is unable to obtain from all its Subcontractors, if any, and furnish to CITY sufficient proof from City's Commissioner of Revenue that all its Subcontractors are in compliance with the license and tax ordinances administered by City's Revenue Division of the Finance Department, CITY may approve final payment to CONTRACTOR if CITY determines that CONTRACTOR has made a good faith effort to furnish evidence or that there are other extenuating circumstances which make it impossible for CONTRACTOR to furnish sufficient proof.

C. Missouri Sales Tax Exemption. Pursuant to Section 144.062, RSMo, CITY is a Missouri exempt entity and tangible personal property to be incorporated or consumed in the construction of this Project may be purchased without sales tax. CITY shall furnish CONTRACTOR a Missouri Project Exemption Certificate for Sales Tax at the time of issuance of the Notice to Proceed.

6.12 Use of Site and Other Areas

A. CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas identified in and permitted by the Contract Documents and other areas permitted by Laws or Regulations. CONTRACTOR shall not unreasonably encumber the Site and the other areas with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to the Site or the other areas, or to the owner or occupant thereof, or of any adjacent land or areas, resulting from the performance of the Work.

B. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. In case of a failure on the part of the CONTRACTOR to restore such property or to make good such damage or injuries, the CITY may, upon forty-eight (48) hours written notice to the CONTRACTOR, repair, rebuild or otherwise restore such property as the CITY may deem necessary, and the cost thereof will be deducted from any moneys due or which may become due the CONTRACTOR under this Contract.

C. CONTRACTOR shall, to the fullest extent permitted by Laws or Regulations, defend, indemnify and hold harmless CITY, DESIGN PROFESSIONAL, Consultants and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any claim or action, legal or equitable, brought by any such owner or occupant against CITY, DESIGN PROFESSIONAL or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.

D. During the progress of the Work, CONTRACTOR shall keep the Site and the other areas free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work CONTRACTOR shall remove all waste materials, rubbish and debris from Site and other areas as well as all tools, appliances, construction equipment and machinery and surplus materials. CONTRACTOR shall leave the Site clean and ready for utilization or occupancy by CITY at Substantial Completion of the Work. CONTRACTOR shall restore to all property not designated for alteration by the Contract Documents to its pre-Work condition.

E. CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.13 Record Documents

A. CONTRACTOR shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, the Contract, Written Amendments, Change Orders, Work Change Directives, and written interpretations and clarifications in good order and annotated to show all changes made during construction. These record documents, together with all approved Samples and a counterpart of all approved Shop Drawings, will be available to CITY and DESIGN PROFESSIONAL for reference. Upon completion of the Work, these record documents, Samples and Shop Drawings will be delivered to DESIGN PROFESSIONAL for CITY.

6.14 Safety and Protection

A. CONTRACTOR shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall comply with all applicable Laws or Regulations relating to the safety of persons or property to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for safety and protection. CONTRACTOR shall deliver to CITY a copy of CONTRACTOR'S Health and Safety Plan as provided in the Notice of Intent to Contract.

B. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in Paragraph 6.14 B.2 or 6.14 B.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of CITY, DESIGN PROFESSIONAL, Consultant, or anyone employed by any of them or anyone for whose

acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR, Subcontractor, Supplier or other person or organization directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and DESIGN PROFESSIONAL has issued a notice to CONTRACTOR in accordance with Paragraph 14.07 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion). CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;
2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of the Work.

6.15 Safety Representative

A. In accordance with OSHA standards, CONTRACTOR shall designate a qualified and experienced safety representative whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs. CONTRACTOR's safety representative shall remain at the Site whenever there is Work in progress and shall immediately notify CITY of any emergencies or accidents occurring at the Site

6.16 Hazard Communication Programs

A. CONTRACTOR shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.17 Emergencies

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, CONTRACTOR, without special instruction or authorization from CITY or DESIGN PROFESSIONAL, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give CITY and DESIGN PROFESSIONAL prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If CITY determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to an emergency, a Work Change Directive or Change Order will be issued.

B. A change in the Contract Documents pursuant to Paragraph 6.15 A will not be an automatic authorization of, nor a condition precedent to, entitlement to adjustment in the Contract Price or Contract Times. If CITY and CONTRACTOR are unable to agree on entitlement to, or magnitude of, an equitable adjustment in the Contract Price or Contract Times, a Claim may be made therefore as provided in Article 16. However, OWNER, DESIGN PROFESSIONAL and Consultants shall not be liable to CONTRACTOR for any costs, losses or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all other dispute resolution costs) sustained by CONTRACTOR on or in connection with any other project or anticipated project.

6.18 Shop Drawings and Samples

A. CONTRACTOR shall submit Shop Drawings to DESIGN PROFESSIONAL for review and approval in accordance with the accepted schedule of Shop Drawings and Sample submittals (see Paragraph 2.07). All submittals shall be identified as DESIGN PROFESSIONAL may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings shall be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to show DESIGN PROFESSIONAL the services, materials and equipment CONTRACTOR proposes to provide and to enable DESIGN PROFESSIONAL to review the information for the limited purposes required by Paragraph 6.18 D.

B. CONTRACTOR shall also submit Samples to DESIGN PROFESSIONAL for review and approval in accordance with said accepted schedule of Shop Drawings and Sample submittals. Each Sample shall be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended and otherwise as DESIGN PROFESSIONAL may require to enable DESIGN PROFESSIONAL to review the submittal for the limited purposes required by Paragraph 6.18 D. The numbers of each Sample to be submitted will be as specified in the Specifications.

C. Submittal Procedures:

1. Before submitting each Shop Drawing or Sample, CONTRACTOR shall have determined and verified:
 - a. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar information with respect thereto;

b. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly and installation pertaining to the performance of the Work;

c. all information relative to means, methods, techniques, sequences and procedures of construction and safety precautions and programs incident thereto; and

d. CONTRACTOR shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review and approval of that submittal.

3. At the time of each submission, CONTRACTOR shall give DESIGN PROFESSIONAL specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, the notice to be in a written communication separate from the submittal, and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to DESIGN PROFESSIONAL for review and approval of each such variation.

D. DESIGN PROFESSIONAL's Review:

1. DESIGN PROFESSIONAL will review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals accepted by DESIGN PROFESSIONAL as required by Paragraph 2.06. DESIGN PROFESSIONAL's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation into the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. DESIGN PROFESSIONAL's review and approval will not extend to means, methods, techniques, sequences or procedures of construction (except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. DESIGN PROFESSIONAL's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called DESIGN PROFESSIONAL's attention to each such variation at the time of submission as required by Paragraph 6.18 C.3, and DESIGN PROFESSIONAL has given written approval of each such variation by specific written notation thereof incorporated into or accompanying the Shop Drawing or Sample approval; nor will any approval by DESIGN PROFESSIONAL relieve CONTRACTOR from responsibility for complying with the requirements of Paragraph 6.18 C.1.

E. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submissions accepted by DESIGN PROFESSIONAL as required by Paragraph 2.06, any related Work performed prior to DESIGN PROFESSIONAL's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

F. CONTRACTOR shall make corrections required by DESIGN PROFESSIONAL and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by DESIGN PROFESSIONAL on previous submittals.

6.19 Continuing the Work

A. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with CITY. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as CITY and CONTRACTOR may otherwise agree in writing.

6.20 CONTRACTOR's General Warranty and Guarantee

A. CONTRACTOR warrants and guarantees to CITY, DESIGN PROFESSIONAL and Consultants that all Work will be in accordance with the Contract Documents and will not be defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors, Suppliers or any other individual or entity for whom CONTRACTOR is responsible; or

2. normal wear and tear under normal usage.

B. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents:

1. observations by DESIGN PROFESSIONAL;

2. recommendation of any progress or final payment by DESIGN PROFESSIONAL;

3. the issuance of a certificate of Substantial Completion or any payment related thereto by CITY to CONTRACTOR;
 4. use or occupancy of the Work or any part thereof by OWNER;
 5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by DESIGN PROFESSIONAL;
 6. any inspection, test or approval by others; or
 7. any correction of defective Work by CITY.
- C. Nonconforming Work is rejected unless expressly accepted in writing by the CITY's Representative.

ARTICLE 7 OTHER WORK

7.01 Related Work at Site

A. CITY may perform other work related to the Project at the Site by CITY's own forces, or let other direct contracts therefore, or have other work performed by utility owners. If such other work is to be performed and such fact was not noted in the Contract Documents, then:

1. Written notice thereof will be given to CONTRACTOR prior to starting any such other work, and
2. CONTRACTOR may make a Claim therefore as provided in Article 16 if CONTRACTOR believes that such performance involves additional expense to CONTRACTOR or requires additional time and the parties are unable to agree as to the amount or extent thereof.

B. CONTRACTOR shall afford each other contractor who is a party to such a direct contract, and each utility owner (and CITY, if CITY is performing the additional work with CITY's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of CITY and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between CITY and such utility owners and other contractors.

C. If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 7, CONTRACTOR shall inspect such other work and promptly report to CITY and DESIGN PROFESSIONAL in writing any delays, defects or deficiencies in such other work that render it unavailable or unsuitable for the proper execution or results of CONTRACTOR's Work. CONTRACTOR's failure to report same will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR's Work, except for latent or non-apparent defects and deficiencies in such other work.

7.02 Coordination

A. If CITY contracts with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the person, firm or corporation who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;
2. the specific matters to be covered by such authority and responsibility will be itemized; and
3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, CITY shall have sole authority and responsibility in respect of such coordination.

ARTICLE 8 CITY'S RESPONSIBILITIES

8.01 Communications to CONTRACTOR

A. Except as otherwise provided in these General Conditions, CITY shall issue all communications to CONTRACTOR.

8.02 Replacement of DESIGN PROFESSIONAL

A. In case of termination of the employment of DESIGN PROFESSIONAL, CITY shall appoint a DESIGN PROFESSIONAL whose status under the Contract Documents shall be that of the former DESIGN PROFESSIONAL.

8.03 Furnish Data and Prompt Payment

A. CITY shall promptly furnish the data required of OWNER under the Contract Documents and shall make payments to CONTRACTOR when they are due.

8.04 Lands and Easements; Reports and Tests

A. CITY's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to CITY's duty to identify and make available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the Site and drawings of physical conditions in existing structures at or contiguous to the Site that have been utilized by DESIGN PROFESSIONAL in preparing the Contract Documents.

8.05 Insurance

A. CITY's responsibilities, if any, for purchasing and maintaining liability and property insurance are set forth in Article 5 and the Supplementary Conditions.

8.06 Change Orders

A. CITY is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.07 Inspections, Tests and Approvals

A. CITY's responsibility for certain inspections, tests and approvals is set forth in Paragraph 13.02 F.

8.08 Limitations on CITY's Responsibilities

A. The CITY shall not supervise, direct or have control or authority over, nor be responsible for, CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws or Regulations applicable to the furnishing or performance of the Work. CITY will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.

8.09 Undisclosed Hazardous Environmental Condition

A. CITY's responsibility for an undisclosed Hazardous Environmental Condition uncovered or revealed at the Site is set forth in Paragraph 4.06.

8.10 Evidence of Financial Arrangements

A. CITY will furnish CONTRACTOR reasonable evidence that financial arrangements have been made to satisfy OWNER's obligations under the Contract.

8.11 CITY's Representative

A. CITY will provide a representative during the construction period. The duties, responsibilities and the limitations of authority of the CITY's Representative during construction are set forth in the Contract Documents.

8.12 Visits to Site

A. CITY's Representative will make visits to the Site at intervals appropriate to the various stages of construction as CITY's Representative deems necessary in order to observe the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, CITY's Representative will endeavor to determine, in general, if the Work is proceeding in accordance with the Contract Documents. CITY's Representative will not be required to make exhaustive or continuous on-Site inspections to check the quality or quantity of the Work.

ARTICLE 9 DESIGN PROFESSIONAL'S STATUS DURING CONSTRUCTION

9.01 General Scope of DESIGN PROFESSIONAL's Duties

A. DESIGN PROFESSIONAL's efforts will be directed toward providing for CITY a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of visits to the Site and on-Site observations, DESIGN PROFESSIONAL will keep CITY informed of the progress of the Work and will endeavor to guard CITY against defective Work. DESIGN PROFESSIONAL's visits to the Site and on-Site observations are subject to all the limitations on DESIGN PROFESSIONAL's authority and responsibility set forth in Paragraph 9.08.

9.02 Resident Project Representative

A. If CITY and DESIGN PROFESSIONAL agree, DESIGN PROFESSIONAL will furnish a resident Project representative to assist DESIGN PROFESSIONAL in providing more extensive observation of the Work. The responsibilities, authority and limitations thereon of any such resident Project representative and assistants will be as provided in Paragraph 9.08 and in the Supplementary Conditions.

9.03 Clarifications and Interpretations

A. DESIGN PROFESSIONAL will issue with reasonable promptness written clarifications or interpretations (which may be in the form of Drawings) of the requirements of the Drawings and Specifications prepared by the DESIGN

PROFESSIONAL as DESIGN PROFESSIONAL may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on CITY and CONTRACTOR. If CITY or CONTRACTOR believes that a written clarification or interpretation justifies an adjustment in the Contract Price pursuant to Article 11 and/ or the Contract Times pursuant to Article 12 and the parties are unable to agree to the amount or extent thereof, if any, a Claim may be made therefore as provided in Article 16.

9.04 Rejecting Defective Work

A. DESIGN PROFESSIONAL will have authority to disapprove or reject Work which DESIGN PROFESSIONAL believes to be defective, that DESIGN PROFESSIONAL believes will not produce a completed Project that conforms to the Contract Documents, or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. DESIGN PROFESSIONAL will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04 B, whether or not the Work is fabricated, installed or completed.

9.05 Shop Drawings, Change Orders and Payments

A. In connection with DESIGN PROFESSIONAL's authority as to Shop Drawings and Samples, see Paragraph 6.18.

B. In connection with DESIGN PROFESSIONAL's authority as to Change Orders, see Article 10.

C. In connection with DESIGN PROFESSIONAL's authority as to Applications for Payment, see Article 14.

9.06 Determinations for Unit Prices

A. DESIGN PROFESSIONAL will initially determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. DESIGN PROFESSIONAL will review with CONTRACTOR the DESIGN PROFESSIONAL's preliminary determinations on such matters before rendering a written opinion thereon (by recommendation of an Application for Payment or otherwise to the CITY). CITY reserves the right to make a final determination of the actual quantities and classifications of Unit Price Work in reviewing an Application for Payment. Within ten (10) days after the date of receipt of any such decision, CONTRACTOR may deliver to CITY and to DESIGN PROFESSIONAL written notice of intention to appeal CITY's decision pursuant to Article 16.

9.07 Decisions on Requirements of Contract Documents and Acceptability of Work

A. DESIGN PROFESSIONAL will be the initial interpreter of the requirements of the Drawings and Specifications prepared by DESIGN PROFESSIONAL and judge of the acceptability of the Work thereunder.

B. When functioning as interpreter and judge under this Paragraph 9.07, DESIGN PROFESSIONAL will not show partiality to OWNER or CONTRACTOR.

C. Claims, disputes and other matters relating to the acceptability of the Work, quantities and classifications of Unit Price Work, or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work will be referred initially to CITY's Representative in writing with a request for a formal decision in accordance with Article 16.

9.08 Limitations on DESIGN PROFESSIONAL's Authority and Responsibilities

A. Neither DESIGN PROFESSIONAL's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by DESIGN PROFESSIONAL in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise or performance of any authority or responsibility by DESIGN PROFESSIONAL shall create, impose or give rise to any duty owed by DESIGN PROFESSIONAL to CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them.

B. DESIGN PROFESSIONAL will not supervise, direct, control or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws or Regulations applicable to the furnishing or performance of the Work. DESIGN PROFESSIONAL will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.

C. DESIGN PROFESSIONAL will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

D. DESIGN PROFESSIONAL's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, Bonds and certificates of inspection, tests and approvals and other documentation required to be delivered by Paragraph 14.07 will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals, that the results certified indicate compliance with, the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 9.08 shall also apply to DESIGN PROFESSIONAL's Consultants, resident Project representative and assistants as identified in the Supplementary Conditions.

ARTICLE 10 CHANGES IN THE WORK

10.01 Authorized Changes in the Work

A. Without invalidating the Contract and without notice to any surety, CITY may, at any time or from time to time, order additions, deletions or revisions in the Work. Such additions, deletions or revisions will be authorized by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved that will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If CITY and CONTRACTOR are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price pursuant to Article 11 or an adjustment of the Contract Times pursuant to Article 12 or both that should be allowed as a result of a Work Change Directive, a Claim may be made therefore as provided in Article 16.

10.02 Unauthorized Changes in the Work

A. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.17 or in the case of uncovering Work as provided in Paragraph 13.04.

10.03 Signing of Change Orders

A. CITY and CONTRACTOR, and DESIGN PROFESSIONAL shall sign appropriate Change Orders covering:

1. changes in the Work which are:
 - a. ordered by CITY pursuant to Paragraph 10.01 A; or
 - b. required because of acceptance of defective Work under Paragraph 13.08 or correcting defective Work under Paragraph 13.09; or
 - c. agreed to by the parties;
2. changes in the Contract Price or Contract Times or both which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
3. changes in the Contract Price or Contract Times or both which embody the substance of any written decision recommended by DESIGN PROFESSIONAL and approved by CITY pursuant to Paragraph 9.06, provided that, in lieu of signing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws or Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in Paragraph 6.19.

10.04 Notification to Surety

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times or both) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

ARTICLE 11 CHANGE OF CONTRACT PRICE

11.01 Change of Contract Price

A. The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at CONTRACTOR's expense without change in the Contract Price.

B. The Contract Price may only be changed by a Change Order. Any request for an adjustment in the Contract Price shall be based on written notice delivered within fourteen (14) calendar days after occurrence of the event giving rise to the request or within fourteen (14) calendar days after first recognition of the conditions giving rise to the request. Prior notice is not required for requests or claims relating to an emergency endangering life or property as described in Paragraph 6.16. Thereafter, the CONTRACTOR shall submit written documentation of its request, including appropriate supporting documentation, within ten (10) calendar days after giving notice, unless the CITY grants an extension based on good cause shown by the CONTRACTOR that such additional time is warranted.

C. The value of any Work covered by a Change Order or of any request for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by Unit Prices contained in the Contract Documents, by application of such Unit Prices to the quantities of the items involved (subject to the provisions of Paragraph 11.04); or

2. where the Work involved is not covered by Unit Prices contained in the Contract Documents, by a mutually agreed lump sum; or

3. where the Work involved is not covered by Unit Prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 11.01 C.2, on the basis of the Cost of the Work (determined as provided in Paragraphs 11.02 A and B) plus a CONTRACTOR's fee for overhead and profit (determined as provided in Paragraph 11.01 D).

D. The CONTRACTOR's fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. for costs incurred under Paragraphs 11.02 A.1 and 11.02 A.2, the CONTRACTOR's fee shall be ten percent (10%);

b. for costs incurred under Paragraph 11.02 A.3, the CONTRACTOR's fee shall be five percent (5%);

c. where one or more tiers of subcontracts are on the basis of the Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.01 D.2 and 11.02 A.1 through A.3 is that the Subcontractor who actually performs or furnishes the Work, at whatever tier, will be paid a fee of ten percent (10%) of the costs incurred by such Subcontractor under Paragraphs 11.02 A.1 and 11.02 A.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent (5%) of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.02 A.4, 11.02 A.5 and 11.02 B;

e. the amount of credit to be allowed by CONTRACTOR to CITY for any change which results in a net decrease in cost will be the amount of the actual net decrease in costs plus a deduction in CONTRACTOR's fee by an amount equal to five percent (5%) of such net decrease; and

f. when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.01 D.2.a through 11.01 D.2.e, inclusive.

E. Whenever the Cost of the Work is to be determined pursuant to Paragraphs 11.02 A and B, CONTRACTOR shall establish and maintain records thereof in accordance with generally accepted accounting practices and submit in form acceptable to CITY an itemized cost breakdown together with supporting data.

11.02 Cost of the Work

A. The term "Cost of the Work" means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. When the value of any Work covered by a Change Order or when a request for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to CONTRACTOR will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the request. Except as otherwise agreed to in writing by CITY, costs covered by Change Orders or requests shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any costs itemized in 11.02 B:

1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work, using occupational titles and job classifications agreed upon by CITY and CONTRACTOR. Such employees shall include, without limitation, job Site superintendents, foremen and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing the Work after regular working hours, on Saturdays, Sundays or legal holidays, shall be included in the above to the extent authorized by OWNER.

2. Cost of all materials and equipment furnished and incorporated into the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless CITY deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to CITY. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to CITY, and CONTRACTOR shall make provisions so that they may be obtained.

3. Payments made by CONTRACTOR to Subcontractors for Work performed or furnished by Subcontractors. If required by CITY, CONTRACTOR shall obtain competitive bids from Subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to CITY who will then determine, with the advice of DESIGN PROFESSIONAL, which bids, if any, will be accepted. If any subcontract provides that the Subcontractor is to be paid on the basis of the Cost of the Work plus a fee,

the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in Paragraphs 11.01 D and E and 11.02 A and B. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work when such services are approved in advance by CITY in writing.

5. Other costs including the following:

a. The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the Site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value of such items used but not consumed which remain the property of CONTRACTOR.

c. Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by CITY with the advice of DESIGN PROFESSIONAL, and the costs of transportation, loading, unloading, installation, assembly, dismantling and removal thereof, all in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

d. Applicable sales, consumer, use or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws or Regulations.

e. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses required to perform the Work.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by CITY in accordance with Article 5), provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of CITY. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, CONTRACTOR shall be paid for those services a fee proportionate to that stated in Paragraph 11.01 D.2.

g. The cost of utilities, fuel and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage and similar petty cash items in connection with the Work.

i. Cost of premiums for additional or increased Bonds, or for insurance required because of approved changes in the Work.

B. Costs excluded: The term "Cost of the Work" shall not include any of the following:

1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the Site or in CONTRACTOR's principal or a branch office for general administration of the Work (if not specifically included in the agreed upon occupational titles and job classifications referred to in Paragraph 11.02 A.1 or specifically covered by Paragraph 11.02 A.4), all of which are to be considered administrative costs covered by the CONTRACTOR's fee.

2. Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the Site.

3. Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.

4. Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials, or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 11.02 A.

11.03 Cash Allowances

A. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be furnished and performed for such sums as may be acceptable to CITY. CONTRACTOR agrees that:

1. the allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. CONTRACTOR's costs for unloading and handling on the Site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

B. Prior to final payment, an appropriate Change Order will be issued by CITY to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.04 Unit Price Work

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Contract. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made in accordance with Paragraph 9.06.

B. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.

C. CITY or CONTRACTOR may negotiate an adjustment of the price per unit of Unit Price Work stated in the Contract if:

1. the quantity of any item of Unit Price Work performed by CONTRACTOR differs by twenty percent (20%) or more from the estimated quantity of such item indicated in the Contract; and

2. there is no corresponding adjustment with respect to any other item of Work; and

3. CONTRACTOR believes that CONTRACTOR is entitled to an increase in Contract Price as a result of having incurred additional expense or CITY believes that CITY is entitled to a decrease in Contract Price.

11.05 Dispute Resolution

A. If CITY and CONTRACTOR are unable to agree on entitlement to, or magnitude of, an equitable adjustment in the Contract Price in accordance with Article 11 within fourteen (14) calendar days from the receipt of supporting documentation of the request pursuant to 11.01.B., unless the CITY grants an extension based on good cause shown by the CONTRACTOR that such additional time is warranted, then a Claim for such adjustment may be made pursuant to Article 16.

ARTICLE 12 CONTRACT TIMES

12.01 Time of the Essence

A. All times stated in the Contract Documents are of the essence of the Contract.

12.02 Change of Contract Times

A. The Contract Times (or Milestones) may only be changed by a Change Order. Any request for an adjustment in the Contract Times shall be based on written notice delivered within fourteen (14) calendar days after occurrence of the event giving rise to the request or within fourteen (14) calendar days after first recognition of the conditions giving rise to the request. Thereafter, the CONTRACTOR shall submit written documentation of its requests, including appropriate supporting documentation, within ten (10) days after giving notice, unless the CITY grants an extension based on good cause shown by the CONTRACTOR that such additional time is warranted.

12.03 Proof Required to Justify an Extension of Time for Excusable and Compensable Delays

A. In support of any request for an extension of the Contract Times pursuant to this Article, CONTRACTOR must demonstrate to the reasonable satisfaction of the CITY that the critical path of the approved baseline project schedule was delayed. CONTRACTOR shall be entitled to an increase in contract time for the number of days that the critical path was delayed solely as a result of the compensable or excusable event. A compensable or excusable event includes, but is not limited to:

1. unreasonable delay of issuance of Notice to Proceed by CITY;
2. CITY's unreasonable delay of delivery furnished materials, equipment, or work;
3. unreasonable delay responding to shop drawings and submittals;
4. CITY's unreasonable delay in issuing a Change Order;

5. an order by the CITY to stop the Work where the CONTRACTOR was not at fault; and
6. other reasonable grounds as determined by the City in its sole discretion.

B. CONTRACTOR shall compare the critical path of the approved baseline project schedule to the actual critical path of the Work, identifying the specific impact of the compensable or excusable event.

C. CONTRACTOR shall submit to the CITY a written time impact analysis illustrating the influence of each compensable or excusable event on the date of Substantial Completion. The time impact analysis shall demonstrate the time impact based on the date of the delay in time and the event time computations or all affected activities.

D. If the critical path of the Work is delayed by "Force Majeure", the CONTRACTOR shall be entitled only to an extension of the Contract Times for the number of days of delay to the critical path. For purposes of this paragraph, "Force Majeure" shall mean fire, tornado, flood, earthquake, war, act of terrorism, civil disturbance, or labor strikes away from the project site.

E. Extensions of contract time pursuant to this section will be granted only to the extent that the time adjustments exceed the total float time available when the event causing the delay occurred.

12.04 Delays Within CONTRACTOR's Control

A. The Contract Times (or Milestones) will not be extended due to delays within the control of CONTRACTOR. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.05 Delays Beyond the CITY's and CONTRACTOR's Control

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both CITY and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay.

12.06 Delay Damages

A. In no event shall CITY be liable to CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of CONTRACTOR, or
2. delays beyond the control of CITY or CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this Paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate CONTRACTOR due to delay, interference, or disruption directly attributable to actions or inaction of CITY, DESIGN PROFESSIONAL, Consultant or anyone for whom CITY, DESIGN PROFESSIONAL or Consultant is responsible.

12.07 Dispute Resolution

A. If CITY and CONTRACTOR are unable to agree on entitlement to, or magnitude of, an equitable adjustment in the Contract Time in accordance with Article 12 within fourteen (14) calendar days from the receipt of supporting documentation of the request pursuant to 12.02, unless the CITY grants an extension based on good cause shown by the CONTRACTOR that such additional time is warranted, then a Claim for such adjustment may be made pursuant to Article 16.

ARTICLE 13 TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 Access to Work

A. CITY, DESIGN PROFESSIONAL, Consultants, other representatives and personnel of CITY, independent testing laboratories and governmental agencies with jurisdictional interests will have access to the Site and Work at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide them proper and safe conditions for such access and advise them of CONTRACTOR's Site safety procedures and programs so that they may comply therewith as applicable.

13.02 Tests and Inspections

A. CONTRACTOR shall give DESIGN PROFESSIONAL and CITY's Representative timely notice of readiness of the Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. If any Work (or the work of others at the Site) that is to be inspected, tested or approved is covered by CONTRACTOR without written approval required by Paragraphs 13.02 D or 13.02 E, it must, if requested by CITY's Representative, be uncovered for observation.

C. Uncovering Work as provided in Paragraph 13.02 B, shall be at CONTRACTOR's expense unless CONTRACTOR has given DESIGN PROFESSIONAL and CITY's Representative timely notice of CONTRACTOR's intention to cover the same and DESIGN PROFESSIONAL and CITY's Representative have not acted with reasonable promptness in response to such notice.

D. If Laws or Regulations of any public body (including City) having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish DESIGN PROFESSIONAL and CITY's Representative the required certificates of inspection or approval.

E. CONTRACTOR shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for CITY's and DESIGN PROFESSIONAL's acceptance of materials or equipment to be incorporated into the Work., or acceptance of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation into the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to CITY and DESIGN PROFESSIONAL.

F. CITY shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests or approvals covered by Paragraph 13.02 D and E;
2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04 B shall be paid as provided in said Paragraph 13.04 B; and
3. as otherwise specifically provided in the Contract Documents.

13.03 Notice of Defects

A. Prompt notice of all defective Work of which either CITY or DESIGN PROFESSIONAL has actual knowledge will be given to CONTRACTOR. Defective Work may be rejected, corrected or accepted as provided in this Article 13.

13.04 Uncovering Work

A. If any Work (or the work of others at the Site) is covered contrary to the written request of DESIGN PROFESSIONAL or CITY's Representative, it must, if requested by CITY's Representative, be uncovered for DESIGN PROFESSIONAL's or CITY's Representative's observation and replaced at CONTRACTOR's expense.

B. If CITY considers it necessary or advisable that covered Work be observed by DESIGN PROFESSIONAL or CITY's Representative or be inspected or tested by others, CONTRACTOR, at CITY's request, shall uncover, expose or otherwise make available for observation, inspection or testing as may be required, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others; and CITY shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, CITY may make a Claim therefore as provided in Article 16. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction. If the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a Claim therefore as provided in Article 16.

13.05 CITY May Stop the Work

A. If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, CITY may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of CITY to stop the Work shall not give rise to any duty on the part of CITY to exercise this right for the benefit of CONTRACTOR, any Subcontractor, Supplier, other individual or entity or any surety or employee or agent of any of them.

13.06 Correction or Removal of Defective Work

A. If required by CITY, CONTRACTOR shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by either DESIGN PROFESSIONAL or CITY's Representative, remove it and replace it with Work that is not defective. CONTRACTOR shall pay all costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all

court or arbitration or other dispute resolution costs) caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.07 Correction Period

A. If within one (1) year after the date of Substantial Completion, or such longer period of time as may be prescribed by Laws or Regulations, by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for CONTRACTOR's use by CITY or permitted by Laws and Regulations as contemplated in Paragraph 6.10 is found to be defective, CONTRACTOR shall promptly, without cost to CITY and in accordance with CITY's written instructions:

1. correct the repair of damages to such land or areas; or
2. correct such defective Work, or if it has been rejected by CITY, remove it from the Site and replace it with Work that is not defective; and
3. satisfactorily correct or remove and replace any damage to other Work or to the work of others or damage to other lands or areas resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in the event of an emergency where delay by CONTRACTOR would cause serious risk of loss or damage, CITY may have the defective Work corrected or the rejected Work removed and replaced, and all costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) caused by or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one (1) year, or such longer period of time as may be prescribed within Paragraph 13.07 A, after such correction or removal and replacement has been satisfactorily completed.

D. CONTRACTOR's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for or waiver of the provisions of any applicable statute of limitation or repose.

13.08 Acceptance of Defective Work

A. If, instead of requiring correction or removal and replacement of defective Work, CITY prefers to accept it, CITY may do so. CONTRACTOR shall pay all costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to CITY's evaluation of and determination to accept such defective Work and shall pay OWNER for the diminished value of the Work. If any such acceptance occurs prior to DESIGN PROFESSIONAL's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions into the Contract Documents with respect to the Work and, due to the diminished value of the Work, CITY shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, CITY may make a Claim therefore as provided in Article 16. If the acceptance of defective Work occurs after such recommendation, an appropriate amount shall be paid by CONTRACTOR to CITY.

13.09 CITY May Correct Defective Work

A. If CONTRACTOR fails within a reasonable time after written notice from DESIGN PROFESSIONAL or CITY's Representative to correct defective Work or to remove and replace rejected Work as required by CITY in accordance with Paragraph 13.06, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, CITY may, after seven (7) days written notice to CONTRACTOR, correct and remedy any such deficiency.

B. CITY shall proceed expeditiously when exercising the rights and remedies under this Paragraph 13.09. In connection with such corrective and remedial action, CITY may exclude CONTRACTOR from all or part of the Site; take possession of all or part of the Work and suspend CONTRACTOR's services related thereto; take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the Site; and incorporate into the Work all materials and equipment stored at the Site or for which CITY has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow CITY, CITY's Representative, agents and employees, CITY's other contractors, DESIGN PROFESSIONAL and Consultants access to the Site to enable CITY to exercise the rights and remedies under this Paragraph 13.09.

C. All costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by CITY in exercising such rights and remedies will be charged against CONTRACTOR and a Change Order will be issued incorporating the necessary revisions into the Contract Documents with respect to the Work; and CITY shall be entitled to an appropriate decrease in the Contract Price. If CITY and CONTRACTOR are unable to agree as to the amount thereof, CITY may make a Claim therefore as provided in Article 16. Such Claims for costs, losses and damages will include but not be limited to all costs of repair or replacement of work of others destroyed or damaged by correction, removal and replacement of CONTRACTOR's defective or rejected Work.

D. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by CITY of CITY's rights and remedies under Paragraphs 13.06 and 13.09.

ARTICLE 14 PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 Schedule of Values

A. 01290.02 Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into form 01290.01 Application for Payment acceptable to DESIGN PROFESSIONAL and CITY. Progress payments for Unit Price Work will be based on the number of units completed.

14.02 Application for Progress Payments

A. Application for Payment

1. At least twenty (20) days before the date stipulated in the Supplementary Conditions for each progress payment (but not more often than once a month), CONTRACTOR shall submit to DESIGN PROFESSIONAL for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated into the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, paid invoice or other documentation warranting that CITY has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect CITY's interest therein, all of which will be subject to CITY's approval.

2. Beginning with the second Application for Payment, each Application shall include:

- a. an affidavit of CONTRACTOR stating that all previous progress payments received for the Work have been applied to discharge CONTRACTOR's legitimate obligations associated with prior Applications for Payment, and
 - b. a copy of the most recent 00485.01 M/WBE Monthly Utilization Report CONTRACTOR has submitted to the CITY's Human Relations Department.
 - c. a copy of the most recent 00485.02 Project Workforce Monthly Report and 00485.03 Company-Wide Workforce Monthly Report CONTRACTOR has submitted to the OWNER's Human Relations Department.
 - d. an update to the approved schedule pursuant to paragraphs 6.04 and 6.05.
3. The amount of retainage with respect to progress payments will be stated in the Supplementary Conditions.

B. Review of Applications

1. DESIGN PROFESSIONAL will, within ten (10) days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to CITY, or return the Application to CONTRACTOR indicating in writing DESIGN PROFESSIONAL's reasons for refusing to recommend payment. In the latter case, CONTRACTOR shall make the necessary corrections and resubmit the Application.

a. After presentation of the Application for Payment to CITY, and if CITY's Representative agrees with DESIGN PROFESSIONAL's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02 B.4) become due and will be paid by CITY to CONTRACTOR, subject to the provisions of Laws or Regulations.

b. No payment shall be approved until the CONTRACTOR has submitted with the Application accompanying documentation as required by the Contract Documents, including, but not limited to, the documentation required by paragraphs 6.04 and 6.05.

2. DESIGN PROFESSIONAL's recommendation of any payment requested in an Application for Payment will constitute a representation by DESIGN PROFESSIONAL to CITY, based on DESIGN PROFESSIONAL's observations of the executed Work as an experienced and qualified DESIGN PROFESSIONAL and on DESIGN PROFESSIONAL's review of the

Application for Payment and the accompanying data and schedules, that to the best of DESIGN PROFESSIONAL's knowledge, information and belief:

- a. the Work has progressed to the point indicated;
- b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under Paragraph 9.06, and to any other qualifications stated in the recommendation); and
- c. the conditions precedent to CONTRACTOR being entitled to such payment appear to have been fulfilled in so far as it is DESIGN PROFESSIONAL's responsibility to observe the Work.

3. DESIGN PROFESSIONAL's recommendation of any payment, including final payment, shall not mean that DESIGN PROFESSIONAL is responsible for CONTRACTOR's means, methods, techniques, sequence or procedures of construction, safety precautions and programs incident thereto, or any failure of CONTRACTOR to comply with Laws or Regulations applicable to the furnishing or performance of Work.

4. DESIGN PROFESSIONAL may refuse to recommend the whole or any part of any payment if, in DESIGN PROFESSIONAL's opinion, it would be incorrect to make the representations to CITY referred to in Paragraph 14.02 B.2. DESIGN PROFESSIONAL may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in DESIGN PROFESSIONAL's opinion to protect CITY from loss because:

- a. the Work is defective, or completed Work has been damaged requiring correction or replacement;
- b. the Contract Price has been reduced by Written Amendment or Change Orders;
- c. CITY has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
- d. DESIGN PROFESSIONAL has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.

C. Reduction in Payment

1. CITY may refuse to make payment of the full amount recommended by DESIGN PROFESSIONAL because:
 - a. Claims have been made by third parties against CITY on account of CONTRACTOR's performance or furnishing of the Work; or
 - b. Claims have been made by CITY against CONTRACTOR in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to CITY to secure the satisfaction and discharge of such Claims;
 - c. there are other items entitling CITY to a set-off against the amount recommended; or
 - d. CITY has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02 B.4.a through c or 15.02 A.1 through 4; but CITY must give CONTRACTOR written notice (with a copy to DESIGN PROFESSIONAL) stating the reasons for such action and promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by CITY and CONTRACTOR, when CONTRACTOR corrects to CITY's satisfaction the reasons for such action; or
 - e. CITY has made a different determination of the actual quantities and classifications of Unit Price Work.

14.03 CONTRACTOR's Warranty of Title

A. CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated into the Project or not, will pass to CITY no later than the time of payment, free and clear of all Liens.

14.04 Substantial Completion

A. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify CITY and DESIGN PROFESSIONAL in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that CITY issue a certificate of Substantial Completion. Within a reasonable time thereafter, CITY, together with CONTRACTOR and DESIGN PROFESSIONAL, shall make an inspection of the Work to determine the status of completion. If DESIGN PROFESSIONAL does not consider the Work substantially complete, DESIGN PROFESSIONAL will notify CONTRACTOR and CITY in writing giving the reasons therefore. If DESIGN PROFESSIONAL considers the Work substantially complete, DESIGN PROFESSIONAL will prepare and deliver to CITY a recommended certificate of Substantial Completion that shall establish the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. CITY shall have seven (7) days after receipt of the recommended certificate during which to make written objection to DESIGN PROFESSIONAL as to any provisions of the certificate or attached list. At the time of delivery of the recommended certificate of Substantial Completion, DESIGN PROFESSIONAL will deliver to CITY and CONTRACTOR a written recommendation as to division of

responsibilities pending final payment between CITY and CONTRACTOR with respect to security, operation, safety, protection of the Work, maintenance, heat, utilities, insurance and warranties and guarantees.

B. CITY shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but CITY shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

14.05 Partial Utilization

A. Use by CITY at CITY's option of any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which CITY, DESIGN PROFESSIONAL and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by CITY for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:

1. CITY at any time may request CONTRACTOR in writing to permit CITY to use any such part of the Work which CITY believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to CITY and DESIGN PROFESSIONAL that such part of the Work is substantially complete and request CITY to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify CITY and DESIGN PROFESSIONAL in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request CITY to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, CITY, together with CONTRACTOR and DESIGN PROFESSIONAL, shall make an inspection of that part of the Work to determine its status of completion. If DESIGN PROFESSIONAL does not consider that part of the Work to be substantially complete, DESIGN PROFESSIONAL will notify CITY and CONTRACTOR in writing, giving the reasons therefore. If DESIGN PROFESSIONAL considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

2. No occupancy or separate operation of part of the Work will be accomplished prior to compliance with the requirements of Paragraph 5.09 with respect to property insurance.

14.06 Final Inspection

A. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, DESIGN PROFESSIONAL will make a final inspection with CITY and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 Final Payment

A. Application for Payment

1. After CONTRACTOR has completed all corrections required by Paragraph 14.06 to the satisfaction of DESIGN PROFESSIONAL and CITY's Representative and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by Paragraph 5.04, certificates of inspection, marked-up record documents (as provided in Paragraph 6.13) and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

a. all documentation required by the Contract Documents, including but not limited to the evidence of insurance required by Subparagraph 5.04 B.7; and

b. 01290.14 "Contractor Affidavit for Final Payment" from CONTRACTOR and 01290.15 "Subcontractor Affidavit for Final Payment" from all Subcontractors, regardless of tier.

B. Review of Application and Acceptance

1. If, on the basis of DESIGN PROFESSIONAL's and CITY's Representative's observation of the Work during construction and final inspection, and DESIGN PROFESSIONAL's and CITY's Representative's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, DESIGN PROFESSIONAL and CITY's Representative are satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, DESIGN PROFESSIONAL will, within ten (10) days after receipt of the final Application for Payment, indicate in writing DESIGN PROFESSIONAL's and CITY's Representative's recommendation of payment and present the Application to CITY for payment. At the same time DESIGN PROFESSIONAL will also give written notice to CITY and CONTRACTOR that the Work is acceptable subject to the provisions of Paragraph 14.09.

2. Otherwise, DESIGN PROFESSIONAL will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application to DESIGN PROFESSIONAL. After the presentation to CITY of the Application and accompanying documentation, in appropriate form and substance, including applicable federal and state prevailing wage provisions, and with DESIGN PROFESSIONAL's recommendation and notice of acceptability, the amount recommended by DESIGN PROFESSIONAL will become due and will be paid by CITY to CONTRACTOR in accordance with Laws and Regulations.

14.08 Final Completion Delayed

A. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and if DESIGN PROFESSIONAL so recommends and CITY concurs, CITY shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of DESIGN PROFESSIONAL, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by CITY for Work not fully completed or corrected is less than the retainage stipulated in the Supplementary Conditions, and if Bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to DESIGN PROFESSIONAL with the Application for Payment. Payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

A. The making and acceptance of final payment will constitute:

1. a waiver of all claims by CITY against CONTRACTOR, except claims previously made in writing and still unsettled, or claims arising from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by CONTRACTOR against CITY other than those previously made in writing pursuant to Paragraphs 16.02 and 16.03 and still unsettled.

14.10 Completion of Work by CITY

A. If CITY must complete the Work, all costs and charges incurred by CITY, together with the cost of completing the Work under the Contract, will be deducted from any monies due or which may become due CONTRACTOR. If such expense exceeds the sum which would have been payable under the Contract, then CONTRACTOR and the surety shall be liable and shall pay to CITY the amount of such excess.

ARTICLE 15 SUSPENSION OF WORK AND TERMINATION

15.01 CITY May Suspend Work

A. Notwithstanding any other provision of this Contract, at any time and without cause, and at its sole and absolute discretion, CITY, may suspend the Work or any portion of the Work by written notice to CONTRACTOR, which will initially fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed in the notice unless the date is changed by a subsequent written notice from CITY. CONTRACTOR may be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any suspension if CONTRACTOR makes a Claim therefore in accordance with Article 16.

B. CONTRACTOR will not be allowed an adjustment in the Contract Price or an extension of the Contract Times if CITY suspends the Work because CONTRACTOR's acts or omissions create or cause an emergency that CITY believes affects the safety or protection of persons, the Work, or property at the Site or adjacent thereto. CITY may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been adequately addressed by CONTRACTOR; however, this right of CITY to stop the Work shall not give rise to any duty on the part of CITY to exercise this right for the benefit of CONTRACTOR, any Subcontractor, Supplier, other individual or entity or any surety or employee or agent of any of them.

15.02 CITY May Terminate for Default

A. CONTRACTOR may be deemed in default and CITY may terminate the services of CONTRACTOR upon the occurrence of any one or more of the following events:

1. CONTRACTOR fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under Paragraph 2.06 and 2.07 as adjusted from time to time pursuant to Paragraphs 6.04, 6.05, 12.02 and 12.03);

2. CONTRACTOR abandons the Work or declares its intention to abandon the Work;
3. CONTRACTOR assigns or attempts to assign its rights or obligations under this Contract or any part thereof to any third party without the prior written consent of CITY;
4. CONTRACTOR fails to make prompt payment duly owing to any subcontractor for Work completed in accordance to the Contract Documents or material supplier for materials delivered for incorporation into the Work within thirty (30) calendar days after payment was due;
5. CONTRACTOR fails to achieve the required dates of substantial and final completion;
6. CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;
7. CONTRACTOR disregards the authority of DESIGN PROFESSIONAL or OWNER; or
8. CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents.

B. CITY may, after giving CONTRACTOR (and the surety) seven (7) days written notice and to the extent permitted by Laws or Regulations, terminate the services of CONTRACTOR, exclude CONTRACTOR from the Site and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment and machinery at the Site and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate into the Work all materials and equipment stored at the Site or for which CITY has paid CONTRACTOR but which are stored elsewhere, and finish the Work as CITY may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by CITY arising out of or resulting from completing the Work, such excess may be paid to CONTRACTOR. If such costs, losses and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to CITY within fourteen (14) calendar days of CITY'S demand for payment. When exercising any rights or remedies under this Paragraph CITY shall not be required to competitively bid this work unless required by law.

C. Where CONTRACTOR's services have been so terminated by CITY, the termination will not affect any rights or remedies of CITY against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by CITY will not release CONTRACTOR from liability.

D. If, after a default termination, it is determined that the CONTRACTOR was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the CITY. The CITY shall then be liable to CONTRACTOR for only those costs enumerated in paragraph 15.03.

15.03 CITY May Terminate for Convenience

A. Notwithstanding any other provision of this Contract, upon seven (7) calendar days' written notice to CONTRACTOR, CITY may, at its sole and absolute discretion, without cause and without prejudice to any other right or remedy of CITY, elect to terminate the Contract. In such case, CONTRACTOR shall, with thirty (30) calendar days of receiving notice of termination under this paragraph, submit to CITY its statement of costs and expenses and shall be paid:

1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
3. for all costs, losses and damages incurred in settlement of terminated contracts with Subcontractors, Suppliers and others; and
4. for reasonable expenses directly attributable to termination if approved in advance by CITY.

B. CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

C. CONTRACTOR waives any costs not submitted to CITY pursuant to paragraph 15.03.A.

D. CITY shall, within thirty (30) calendar days after receipt of CONTRACTOR's statement, pay CONTRACTOR all amounts it determines are properly determined.

ARTICLE 16 CLAIMS AND DISPUTES

16.01 Definition

A. A Claim is a demand or assertion by the CONTRACTOR seeking, as a matter of right, the adjustment of Contract price and/or times with respect to the terms of the Contract.

16.02 Written Notice and Burden of Proof

A. Claims must be made by written notice pursuant to Paragraph 17.01. The written notice shall clearly indicate that the CONTRACTOR is making a claim. The responsibility to substantiate Claims shall rest with the CONTRACTOR. No Claim may be made under this Contract except as provided in this Article.

B. Certification of Claim: The written notice of Claim shall include the following statement signed by the CONTRACTOR's representative: "The CONTRACTOR certifies that all statements made and the facts set out in this claim are true and correct and that no false records have been submitted in support of this claim." **Strict compliance with this paragraph shall be a condition precedent to the creation, existence or validity of any Claim.**

16.03 Time Limits on Claims

A. The CONTRACTOR must give notice to the CITY within fourteen (14) calendar days after the denial of a request for or failure to reach an agreement on a change in Contract Price and/or change in Contract Time pursuant to Article 11 and Article 12 respectively. After the fourteen (14) day period for making Claims has expired, the Claim shall be considered waived.

B. The CONTRACTOR shall submit the Claim to the CITY's Representative.

16.04 Continuing Contract Performance

A. Pending final resolution of a Claim, unless otherwise agreed in writing, the CONTRACTOR shall proceed diligently with performance of the Work and the CITY shall continue to make payments in accordance with the Contract Documents. The CITY may, but is not obligated to, notify the Surety of the nature and amount of the Claim.

16.05 Injury or Damage to Person or Property

A. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts that party is legally liable, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding thirty (30) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter.

16.06 Initial Resolution of Claims and Disputes

A. After the CONTRACTOR has submitted the Claim to the CITY's Representative, the CITY'S Representative and CONTRACTOR'S Representative shall conduct a settlement conference within fourteen (14) calendar days from the date of receipt of the Claim. If the Claim is not settled within seven (7) calendar days following the date of the settlement conference, the CITY'S Representative and the CONTRACTOR's Representative shall state, in writing, following the conclusion of the seven (7) calendar day period, their respective position as to the matters in dispute.

B. The CITY'S and CONTRACTOR'S statement of positions shall state all known factual grounds for each party's position. If the dispute remains unresolved at the end of the seven (7) calendar days from submission of the parties' written position statements, the CONTRACTOR shall have the right to proceed with the pursuit of Claims pursuant to paragraph 16.07.

C. If a Claim has been resolved, the OWNER will prepare or obtain appropriate documentation.

16.07 Final Resolution of Claims and Disputes

A. All administrative procedures set forth in this contract must first be exhausted before suit is filed.

B. If the CITY'S Representative and the CONTRACTOR'S Representative are unable to resolve the dispute pursuant to 16.06, the parties must submit their statements of position to the Director, who shall review the Claim and make a decision within fourteen (14) calendar days.

C. Absent fraud, gross mistake or bad faith, the Director's decision shall be final and binding on CITY and CONTRACTOR within fourteen (14) calendar days after issuance. The CONTRACTOR shall give written notice to the CITY stating its intent to submit its Claim to a court of law pursuant to paragraph 17.05.A. within thirty (30) calendar days after notice of Director's decision.

D. The time frames for the Director's decision and for CONTRACTOR'S written notice of intent may be tolled by participation in voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be mutually acceptable to the parties. Costs of the mediator shall be shared equally among the parties participating in the mediation. In no event shall any time frame be tolled more than 30 days for mediation. However, mediation may be employed at any time at the discretion and mutual agreement of the parties.

E. If the dispute is not resolved during voluntary mediation, The CONTRACTOR agrees that it will file no suit based on facts or evidentiary materials that were not presented for consideration to the CITY during the mediation process or of which the CONTRACTOR had knowledge and failed to present during the administrative procedures.

ARTICLE 17 MISCELLANEOUS

17.01 Giving Notice

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be given by personal delivery, by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice or by confirmed electronic facsimile transmission. Notice is effective on the date of personal delivery, deposit of registered or certified mail, postage prepaid, or confirmed electronic facsimile transmission.

17.02 Computation of Times

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last calendar day of such period. If the last day of such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 Cumulative Remedies

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR and all of the rights and remedies available to CITY and DESIGN PROFESSIONAL hereunder are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

17.04 Survival of Obligations

A. 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 or termination or completion of the Contract.

17.05 Controlling Law

A. This Contract shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. The CITY and CONTRACTOR: (1) shall submit exclusively to the jurisdiction of the state and federal courts located in Jackson County, Missouri and no other; (2) shall waive any and all objections to jurisdiction and venue; and (3) shall not raise forum non conveniens as an objection to the location of any litigation.

ATTACHMENT H. HRD DOCUMENTATION

HRD INSTRUCTIONS FOR REQUESTS FOR QUALIFICATIONS/PROPOSALS

PART A. MINORITY/WOMEN BUSINESS ENTERPRISE REQUIREMENTS

City's MBE/WBE Program.

The City has adopted a Minority/Women Business Enterprise ("MBE/WBE") Program (Sections 4-421 through 3-469, Code of Ordinances) (the "Program") to implement the City's policy of supporting the fullest possible participation in City contracts and change orders of firms owned and controlled by minorities and women. Each construction project may have an MBE and/or WBE goal for participation. An MBE or WBE goal is a numerical objective the City has set for the contract. Goals are stated as a percentage of contract dollars. For example, if an MBE goal for a contract is 10% and a Proposer submits a proposal of \$100,000, the goal for MBE participation would equal \$10,000. The specific MBE/WBE goals on this project are set forth elsewhere in the proposal specifications.

By submitting a proposal, the Proposer agrees, as a material term of the contract, to carry out the City's MBE/WBE Program by making good faith efforts to include certified MBE/WBEs in the project work to the extent of the goals listed for the project and to the fullest extent consistent with submitting the best proposal to the City. Proposer agrees that the Program is incorporated into this document and agrees to follow the Program. Although it is not a requirement that a Proposer in fact meet or exceed both the MBE and WBE Goals, it is a requirement for approval of the proposal that a Proposer objectively demonstrate to the City that good faith efforts have been made to meet the Goals.

The following HRD Forms are attached and must be used for MBE/WBE submittals:

Affidavit of Intended Utilization (HRD Form 13); and
Contractor Utilization Plan/Request for Waiver (HRD Form 8A); and
Letter of Intent to Subcontract (HRD Form 00450.01); and
Timetable for MBE/WBE Utilization (HRD Form 10); and
Request for Modification or Substitution (HRD Form 11); and
Contractor Affidavit for Final Payment (Form 01290.14); and
Subcontractor Affidavit for Final Payment (Form 01290.15).

Warning: The City only gives MBE/WBE credit for a Proposer's use of City certified MBE/WBEs. A certified MBE/WBE firm is a firm that has been certified by the City's Human Relations Department as such. An MBE/WBE firm must be certified before the date on which the contractor utilization plan is due. Certified MBEs and WBEs are listed in the M/W/DBE Kansas City Mo. Online Directory, which is available on the City's website at www.kcmo.org. Before a Proposer submits a proposal, Proposer should contact HRD and consult the directory to make sure any firm proposed for use for MBE/WBE participation has been certified.

Required Submissions with Proposal.

Proposer must submit the following document with its proposal:

Affidavit of Intended Utilization (HRD Form 13). This form states a Proposer's intent to use certified MBE/WBEs in the performance of the contract.

Required Submissions Prior to Contract Award.

Proposer must submit the following documents prior to contract award.

Contractor Utilization Plan/Request for Waiver (HRD Form 8). This form states a Proposer's plan to use specific certified MBE/WBEs in the performance of the contract and includes the following:

The work to be performed by each MBE/WBE and the amounts each is to be paid for the work; and

The name, address, race or ethnic origin, gender and employer identification number or social security number of each MBE/WBE that will perform the work.

An automatic request for waiver in the event Proposer has not met or exceeded the MBE and/or WBE goals for the contract but believes that it has made good faith efforts to meet or exceed the goals and desires a waiver of the goals. If a waiver is requested, HRD will examine the Proposer's documentation of good faith efforts and make a recommendation to grant or deny the waiver. HRD will recommend a waiver be granted only if the Proposer has made good faith efforts to obtain MBE/WBE participation.

Letter(s) of Intent to Subcontract (HRD Form 00450.01). A letter must be provided from each MBE/WBE listed on the Contractor Utilization Plan. These letters verify that the MBE/WBE has agreed to execute a formal agreement for the work and indicate the scope of work to be performed and the price agreed upon for the work.

Additional Required Submissions when Requested by City.

Proposer must submit the following documents when requested by City:

Timetable for MBE/WBE Utilization (HRD Form 10).**Documentation of good faith efforts.****Required Monthly Submissions during term of Contract.**

Proposers must submit the following document on a monthly basis if awarded the contract:

M/WBE Monthly Utilization Report (HRD Form 00485.01). This report must be submitted to the Director by the 15th of each month. Failure to submit timely reports may result in delays in processing of current and future contract approvals and payment applications.

Required Submittals for Final Contract Payment.

Proposer must submit the following documents with its request for final payment under the contract:

Contractor Affidavit for Final Payment (Form 01290.14)**Subcontractor Affidavit(s) for Final Payment (Form 01290.15)****Additional Submittals.**

Proposer may be required to make additional submittals during the term of the Contract, including **Request for Modification or Substitution (HRD Form 11)**. Refer to Section X, Modification of the Contractor Utilization Plan or Substitution of an MBE/WBE, for additional instructions on when this form must be submitted.

MBE/WBE Participation Credit.

The following shall be credited towards achieving the goals:

The total contract dollar amount that a prime contractor has paid or is obligated to pay to a subcontractor that is a certified MBE or WBE, except as otherwise expressly provided for herein.

The total contract dollar amount that a prime contractor that is a certified MBE or WBE performed itself.

Sixty percent (60%) of the total dollar amount paid or to be paid by a prime contractor to obtain supplies or goods from a supplier who is a certified MBE or WBE.

Ten percent (10%) of the total dollar amount paid or to be paid by a prime contractor to obtain supplies or goods from a supply broker who is a certified MBE or WBE.

One hundred percent (100%) of the total dollar amount paid or to be paid by a prime contractor to a manufacturer of construction supplies who is a certified MBE or WBE.

Subcontractor participation with a lower tier MBE/WBE subcontractor using one of the above methods of participation.

NO CREDIT, however, will be given for the following:

Participation in a contract by a MBE or WBE that does not perform a commercially useful function as defined by the Program; and

Any portion of the value of the contract that an MBE or WBE subcontractor subcontracts back to the prime contractor or any other contractor who is not a qualified MBE/WBE; and

Materials and supplies used on the contract unless the MBE/WBE is responsible for negotiating the price, determining quality and quantity, ordering the materials and installing (where applicable) and paying for material itself; and

Work performed by an MBE or WBE in a scope of work other than that in which the MBE or WBE is currently certified.

Methods for Securing Participation of MBE/WBEs and Good Faith Efforts.

A Proposer is required to make good faith efforts to achieve the MBE/WBE goals. Good faith efforts are efforts that, given all relevant circumstances, a Proposer actively and aggressively seeking to meet the goals can reasonably be expected to make. Good faith efforts must be made before the Proposer submits a Contractor Utilization Plan/Request for Waiver (HRD Form 8). However, efforts made to increase participation of MBEs and WBEs following submission of the CUP can be considered as evidence of good faith efforts to meet the goals.

In evaluating good faith efforts, the Director of HRD will consider whether the Proposer has performed the following, along with any other relevant factors:

1. Advertised for at least 15 calendar days prior to the bid or proposal due date opportunities to participate in the contract in general circulation media, trade and professional association publications, small and minority business media, and publications of minority and women's business organizations which are included in a list along with their current contact information identified on the directory as the list of publications available to publish such advertisements, which list shall be updated by HRD no less than every three (3) months.

Sent written notices at least fifteen (15) calendar days prior to the bid or proposal due date containing the information required in section (9) below, by certified mail, e-mail, or facsimile, to at least 80% of MBEs and WBEs which are included in a list along with their contact information identified on the directory as the list of organizations available to receive such notices, which list shall be updated by HRD no less than every three (3) months.

Sent written notices, containing the information required by section (9) below, by certified mail, e-mail or facsimile, to at least 80% of MBEs and WBEs listed on the directory certified in the applicable scopes of work for the particular bid soliciting their participation in the contract at least 15 calendar days prior to the bid or proposal due date.

Attempted to identify portions of the work for qualified MBE and/or WBE participation in order to increase the likelihood of meeting the goals, including breaking down contracts into economically feasible units that take into consideration the capacity of available MBEs/WBEs appearing on the HRD directory.

At any time prior to submission of the CUP or submittal of a request for modification of a CUP, requested assistance in achieving the goals from the Director and acted on the Director's recommendations.

Conferred with certified MBEs and WBEs which inquired about or responded to the bid solicitation and explained to such MBEs and WBEs the scope and requirements of the work for which their bids or proposals were solicited, and if not all certified MBEs and WBEs in the particular scopes listed on the directory have inquired about or responded to the bid solicitation for each scope of work, then contact by certified mail, e-mail or telephone the greater of ten (10) or 80% of additional certified MBEs and WBEs in the particular scopes of work listed on the directory and offer to confer with such MBEs and WBEs for such particular scope of work and request such MBEs and WBEs to submit a proposal.

Attempted to negotiate in good faith with certified MBEs and WBEs which responded to the bid solicitation or those certified MBEs and WBEs that were conferred with as contemplated in section (6) above, and other qualified MBEs and WBEs, at the option of the bidder, proposer, or contractor, as applicable, to perform specific subcontracts; not rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities by the bidder, proposer, or contractor; in the event an MBE or WBE is the low bid, but rejected as unqualified, the bidder, proposer, or contractor and the director or board, as applicable, shall provide sound reasons for rejecting such MBE or WBE.

Attended pre-bid meeting when such meetings were indicated in the solicitation of bids or otherwise by the bidder, proposer, or contractor, as applicable or by the director provided the director provides written direction to the bidder, proposer, or contractor at the time the goals are recommended.

Written notices and advertisements to be provided pursuant to sections (1), (2) and (3) above shall include the following information:

The bid due date;

The name of the project;

The address or general location of the project;

The location of plans and specifications for viewing;

Contact information of the prime contractor;

A general description of the scopes of work that are the subject of the solicitation;

The goals established for the applicable contract, and if the goals are still subject to board approval, then a statement that the goals as stated are preliminary and are subject to board approval;

If the project or any portion of the project is subject to prevailing wage then a statement that all or a portion of the project will be subject to the prevailing wage, as applicable; and if only a portion of the scopes are subject to prevailing wage, then identification of such scopes provided that such scopes are known as of the time of bid solicitation;

The date and time of any pre-bid meeting(s), if any, which have been scheduled by the bidder, proposer, or contractor as of the bid solicitation; and

Any other information deemed relevant by the bidder, proposer, or contractor, as applicable, or the director to the extent the director provides written direction to the bidder, proposer, or contractor of such additional information at the time the goals are recommended by the director.

A Proposer will be required to give the City documentation to prove that it made good faith efforts. The Proposer will be contacted by the City with further instructions about when this documentation must be submitted.

Modification of the Contractor Utilization Plan or Substitution of an MBE/WBE.

A Proposer may need to substitute an MBE and/or WBE or request that the amount of MBE/WBE participation listed in its Contractor Utilization Plan be modified. Proposer must file a **Request for Modification or Substitution (HRD Form 11) prior to actual substitution and within a reasonable time after learning that a modification or substitution is necessary.** The Director may approve substitutions or modifications and upon approval, the modifications and substitutions will become an amendment to the Contractor Utilization Plan. Modifications or substitutions may be approved when:

The Director finds that the Proposer made and provided evidence of good faith efforts to substitute the MBE/WBE listed on the Contractor Utilization Plan with other certified MBE/WBEs for the scope of work or any other scope of work in the contract; and

The Proposer or Contractor has not attempted intentionally to evade the requirements of the program and it is in the best interests of the City to allow a modification or substitution; and

The Director also finds one of the following:

The listed MBE/WBE is non-responsive or cannot perform; or

The listed MBE/WBE has increased its previously quoted price to the bidder, proposer or contractor without a corresponding change in the scope of the work; or

The listed MBE/WBE has committed a material default or breach of its contract with the contractor; or
 Requirements of the scope of work of the contract have changed and render subcontracting not feasible or not feasible at the levels required by the goals established for the contract; or
 The listed MBE/WBE is unacceptable to the contracting department; or
 The listed MBE/WBE thereafter had its certification revoked; or
 A modification shall not be made unless the modification or substitution has first been requested and approved by the Director.

Appeals.

In conformance with the Act, appeals may be made to the City Fairness in Construction Board or Fairness in Professional Services and Goods Board on the following:

The grant or denial of a Request for Waiver;
 Substitution for an MBE/WBE listed on a Contractor Utilization Plan;
 Modification of the percentage of MBE/WBE participation on a Contractor Utilization Plan;
 Liquidated Damages;

The amount of MBE/WBE credit the Contractor may receive for MBE/WBE participation identified in the contractor utilization plan.

Any appeal must be filed in writing with the Director within fifteen (15) calendar days of notice of the determination. Mailing, faxing, personal delivery or posting at HRD of determinations shall constitute notice. The appeal shall state with specificity why the Proposer or Contractor believes the determination is incorrect

Failure to file a timely appeal shall constitute a waiver of a Proposer's or Contractor's right to appeal such determination and such person shall be estopped to deny the validity of any determination which could have been timely appealed.

Access to Documents and Records.

By submitting a proposal, each Proposer agrees to permit the City, its duly authorized agents or employees, access at all reasonable times to all books and business records of Proposer as may be necessary to ascertain compliance with the requirements of this document and the Act, within ten (10) calendar days of the date of the written request.

All Proposers agree to cooperate with the contracting department and HRD in studies and surveys regarding the MBE/WBE program.

Miscellaneous.

A Proposer or Contractor shall bear the burden of proof with regard to all issues on appeal.

In the event of any conflict between this document and the Program, the provisions of the Program shall control. The terms used in this document are defined in the Program.

Oral representations are not binding on the City.

The City Council may waive the requirements of this document and the Program and award the contract to the best proposer if the City Council determines a waiver is in the best interests of the City.

Liquidated Damages – MBE/WBE Program.

If Contractor fails to achieve the MBE/WBE goals stated in its Contractor Utilization Plan, as amended, the City will sustain damages, the exact extent of which would be difficult or impossible to ascertain. Therefore, in order to liquidate those damages, the monetary difference between either (1) the amount of the MBE/WBE goals set forth in the Contractor Utilization Plan, as amended, or (2) the goals established (whichever is lower) and the amount actually paid to qualified MBEs and WBEs for performing a commercially useful function will be deducted from the Contractor's payments as liquidated damages. In determining the amount actually paid to qualified MBEs and WBEs, no credit will be given for the portion of participation that was not approved by the Director, unless the Director determines that the Contractor acted in good faith. No deduction for liquidated damages will be made when, for reasons beyond the control of the Contractor, the MBE/WBE participation stated in the Contractor Utilization Plan, as amended and approved by the Director is not met.

PART B. CONSTRUCTION EMPLOYMENT PROGRAM REQUIREMENTS

(THIS PART IS APPLICABLE TO CITY CONSTRUCTION CONTRACTS ESTIMATED BY THE CITY PRIOR TO SOLICITATION AS REQUIRING MORE THAN 800 CONSTRUCTION LABOR HOURS AND COSTING IN EXCESS OF \$324,000.00.)

City's Construction Employment Program.

The City has adopted a Construction Employment Program (Sections 3-501 through 3-525, Code of Ordinances) (the "Program") to implement the City's policy of supporting the fullest possible utilization of minority and women workers in the construction industry. A person or firm who is awarded a contract to construct, reconstruct, improve, enlarge or alter any fixed work that is estimated by the City prior to solicitation as requiring more than 800 construction labor hours, has an estimated cost that exceeds \$324,000.00, and involves the expenditure of public funds, is subject to company-wide construction employment goals. The minimum goals are currently set at 10% for minorities and 2% for women, but public recognition may be provided if the Proposer achieves at least twice the minimum participation. The successful Proposer may meet these company-wide goals by counting the Proposer's utilization of minorities and women throughout the Kansas City metropolitan statistical area.

By submitting a proposal, the Proposer agrees, as a material term of the contract, to carry out the City's Construction Employment Program by making good faith efforts to utilize minority and women workers on the Proposer's job sites to the fullest extent consistent with submitting the best proposal to the City. Proposer agrees that the Program is incorporated into this document and agrees to follow the Program. Although it is not a requirement that a Proposer in fact meet or exceed the construction employment goals to receive approval from HRD, a Proposer not doing so is required to objectively demonstrate to HRD that good faith efforts have been made.

The following HRD Forms are to be used for Construction Employment Program submittals:

Project Workforce Monthly Report (HRD Form 00485.02)

Company-Wide Workforce Monthly Report (HRD Form 00485.03)

Required Monthly Submissions during Term of Contract.

Proposer must submit the following documents on a monthly basis if awarded the contract:

Project Workforce Monthly Report (HRD Form 00485.02). This report is contract specific. Two copies of this report must be submitted to the Director by the 15th of each month. The first copy will be utilized to report the Proposer's own workforce compliance data with regard to the City's construction contract. The second copy will be utilized to report consolidated workforce compliance data for every subcontractor retained on the City's construction contract. Failure to submit timely reports may result in delays in processing of current and future contract approvals and payment applications.

Company-Wide Workforce Monthly Report (HRD Form 00485.03). This report is not contract specific; it is used to report on the utilization of females and minorities, by trade, company-wide. Two copies of this report must be submitted to the Director by the 15th of each month. The first copy will be utilized to report the Proposer's own workforce compliance data with regard to every contract (both privately and publicly funded) Proposer has in progress throughout the Kansas City metropolitan statistical area. The second copy will be utilized to report consolidated workforce compliance data for every subcontractor retained by Proposer on every contract Proposer has in progress throughout the Kansas City metropolitan statistical area. Failure to submit timely reports may result in delays in processing of current and future contract approvals and payment applications.

Submittal Required for Final Contract Payment.

The last Project Workforce Monthly Report(s) and Company-Wide Workforce Monthly Report(s) shall serve as the final reports and must be submitted before final payment will be made and/or retainage released. Proposer shall note the submittal of the final reports by notation in the box entitled "Final Cumulative Report"

Methods for Securing Workforce Participation and Good Faith Efforts.

A Proposer is required to make good faith efforts to achieve the construction employment goals. If a Proposer will be unable to secure enough minority and female participation to meet or exceed the construction employment

goals, a Proposer must, within a reasonable time after so learning, request a waiver or modification of the goals by the Director of HRD. The Director will examine the Proposer's request and the Proposer's documentation of good faith efforts and grant or deny a waiver or modification. The Director will grant a waiver or modification only if the Proposer has made good faith efforts to secure minority and female participation.

In evaluating good faith efforts, the Director will consider whether the Proposer has performed the following:

For those Proposers that are not signatories to a collective bargaining agreement with organized labor:

Requested in writing the assistance of the Director with respect to efforts to promote the utilization of minorities and women in the workforce and acted upon the Director's recommendations; and

Advertised in minority or women trade association newsletters and/or minority or women owned media at least 15 calendar days prior to the utilization of any construction services on the city construction contract and used terminology that sufficiently describes the work available, the pay scale, the application process, and anything else that one might reasonably be expected to be informed of relevant to the position being advertised; and

Maintained copies of each advertisement and a log identifying the publication and date of publication; and

Conducted real and substantial recruitment efforts, both oral and written, targeting resident, minority and women community-based organization, schools with a significant minority student population, and training organizations serving the recruitment area; and

Established and maintained a current list of resident, minority and women recruitment sources, providing written notification to the recruitment sources of available employment opportunities, and maintained records of the notices submitted to the organizations and any responses thereto; and

Maintained a current file for the time period of the city construction contract with the name, address, and telephone number of each resident, minority and woman job applicant, the source of the referral, whether or not the person was hired, and in the event that the applicant was not hired, the reason therefore; and

Promoted the retention of minorities and women in its workforce with the goals of achieving sufficient annual hours for minorities and women to qualify for applicable benefits; and

Required by written contract that all subcontractors comply with the above efforts.

For those Proposers that are signatories to collective bargaining agreements with organized labor:

Supported the efforts of the Joint Apprenticeship Training Committee (JATC), a joint effort of Labor Unions and contractors, or some other apprenticeship program, whose purpose is to recruit, train and employ new workers for a full time career in the construction industry; and

Requested in writing from each labor union representing crafts to be employed that:

the labor union make efforts to promote the utilization of residents of the City, minorities and women in the workforce; and

the labor union identify any residents of the City, minorities and women in its membership eligible for employment; and

the JATC take substantial and real steps to increase the participation of minorities in the union apprenticeship programs in the aggregate to 30% by 2011 and encourage other labor unions to do the same; and

the JATC take substantial and real steps to increase the participation of women in the union apprenticeship programs in the aggregate to 5% by 2011 and encourage other labor unions to do the same; and

the JATC partner with workforce preparedness programs, community based organizations, employment referral programs and school-sponsored programs to accomplish these goals.

Collaborated with labor unions in promoting mentoring programs intended to assist minorities and women in increasing retention with the goals of achieving sufficient annual hours to qualify for applicable benefits; and

Maintained a current file with the name, address, and telephone number of each resident, minority and women worker identified by the labor union, whether or not the person was hired, and in the event the person was not hired, the reason therefore.

To the extent the good faith efforts applicable to Proposers that are signatories to collective bargaining agreements with organized labor conflict with the procedures implemented by the Proposer in order to comply with the relevant bargaining agreement, the Proposer shall substitute other procedures as may be approved by the Director in writing.

A Proposer will be required to give the City documentation to prove that it made good faith efforts. The Proposer will be contacted by the City with further instructions about when this documentation must be submitted.

Appeals.

In conformance with the Program, appeals may be made to the Construction Workforce Board on the following:

Determinations by the Director that a contractor did not meet the construction employment goals and did not make a good faith effort to meet the goals;

Recommendations by the Director to assess liquidated damages;

Recommendation by the Director that a contractor be declared ineligible to receive any city construction contract for a period of time up to one year.

Any appeal must be filed in writing with the Director within ten (10) working days of notice of the recommendation or determination. The appeal shall state with specificity why the Proposer believes the recommendation or determination is incorrect.

Failure to file a timely appeal shall constitute a waiver of a Proposer's right to appeal such determination or recommendation and such person shall be estopped to deny the validity of any order, determination, recommendation or action of HRD which could have been timely appealed.

Access to Documents and Records.

By submitting a proposal, each Proposer agrees to permit the City, its duly authorized agents or employees, access at all reasonable times to all books and business records of Proposer as may be necessary to ascertain compliance with the requirements of this document and the Program, within ten (10) days of the date of the written request. Each Proposer further agrees to require, if awarded the contract, that every subcontractor permit the City the same access to documents and records.

All Proposers agree to cooperate with the contracting department and HRD in studies and surveys regarding the construction employment program.

Miscellaneous.

A Proposer shall bear the burden of proof with regard to all issues on appeal.

The successful Proposer may be required to meet with the Director of HRD or the Director's designee for the purpose of discussing the construction employment program, the Proposer's efforts to realize the goals, and any other problems and/or issues affecting the realization of the goals or the program in general.

In the event of any conflict between this document and the Program, the provisions of the Program shall control. The terms used in this document are defined in the Program.

Oral representations are not binding on the City.

Liquidated Damages; Suspension – Workforce Program.

If a Proposer fails to achieve the construction employment goals without having previously obtained a waiver or modification of those goals, the City will sustain damages, the exact extent of which would be difficult or impossible to ascertain. These damages are magnified if the failure to abide by the requirements of the Workforce Program is recurring. Therefore, in order to liquidate those damages, City shall be entitled to deduct and withhold the following amounts:

If Proposer failed to meet or exceed the minimum employment goals or otherwise establish that Proposer is entitled to a waiver under circumstances in which Proposer has failed to meet or exceed the goals on one prior occasion within the twenty-four-month period immediately preceding the completion of the work under the Contract, the sum of three thousand dollars (\$3,000.00).

If Proposer failed to meet or exceed the minimum employment goals or otherwise establish that Proposer is entitled to a waiver under circumstances in which Proposer has failed to meet or exceed the goals on two or more

prior occasions within the twenty-four-month period immediately preceding the completion of the work under the Contract, the sum of seven thousand dollars (\$7,000.00).

In addition, Proposer shall be required to attend mandatory compliance training or be declared ineligible to contract with the City for a term provided herein, and as authorized by City's Code of Ordinances:

If Proposer failed to meet or exceed the minimum employment goals or otherwise establish that Proposer is entitled to a waiver under circumstances in which Proposer has not previously failed to meet or exceed the goals within the twenty-four-month period immediately preceding the completion of the work under the Contract, Proposer shall be required to attend a mandatory training class on Workforce Program compliance.

If Proposer failed to meet or exceed the minimum employment goals or otherwise establish that Proposer is entitled to a waiver under circumstances in which Proposer has failed to meet or exceed the goals on one prior occasion within the twenty-four-month period immediately preceding the completion of the work under the Contract, Proposer shall be suspended from participating, either as a contractor or subcontractor, on any future contract with the City for a period of thirty (30) days. Proposer waives any right to invoke any proceeding or procedure under Sections 3-321 of City's Code of Ordinances with regards to any suspension arising hereunder.

If Proposer failed to meet or exceed the minimum employment goals or otherwise establish that Proposer is entitled to a waiver under circumstances in which Proposer has failed to meet or exceed the goals on two or more prior occasions within the twenty-four-month period immediately preceding the completion of the work under the Contract, Proposer shall be suspended from participating, either as a contractor or subcontractor, on any future contract with the City for a period of six (6) months. Proposer waives any right to invoke any proceeding or procedure under Sections 3-321 of City's Code of Ordinances with regards to any suspension arising hereunder.

AFFIDAVIT OF INTENDED UTILIZATION

(This Form must be submitted with your Bid/Proposal)

(Department Project)

(Bidder/Proposer)

STATE OF)
) ss
COUNTY OF)

I, , of lawful age and upon my oath state as follows:

- 1. This Affidavit is made for the purpose of complying with the provisions of the MBE/WBE submittal requirements in the bid/proposal specifications on the above project and is given on behalf of the Bidder/Proposer listed below.
- 2. Bidder/Proposer assures that it presently intends to utilize the following MBE/WBE participation in the above project if awarded the Contract:

PROJECT GOALS: % MBE % WBE
BIDDER/PROPOSER PARTICIPATION: % MBE % WBE

- 3. To the best of Bidder’s/Proposer’s knowledge, the following are the names of certified MBEs or WBEs with whom Bidder/Proposer, or Bidder’s/Proposer’s subcontractors, presently intend to contract if awarded the Contract on the above project: (All firms must currently be certified by Kansas City, Missouri Dept. Of Human Relations)

a. Name of M/WBE Firm
Address
Telephone No.
I.R.S. No.
Area/Scope of work
Subcontract amount

b. Name of M/WBE Firm
Address
Telephone No.
I.R.S. No.
Area/Scope of work
Subcontract amount

c. Name of M/WBE Firm
Address
Telephone No.
I.R.S. No.
Area/Scope of work
Subcontract amount

(List additional MBE/WBEs, if any, on additional pages and attach to this form)

4. Bidder/Proposer will identify before contract award, those MBE/WBE subcontractors with dollar amounts and scopes of work which apply to or exceed the MBE/WBE goals for the Project on the ***Contractor Utilization Plan/Request for Waiver (HRD 08)***.
5. Bidder/Proposer agrees that failure to meet or exceed the MBE/WBE Goals for the above project will automatically render this bid/proposal non-responsive if Bidder/Proposer fails to establish good faith efforts towards meeting the goals as set forth in the HRD Forms and Instructions.
6. If applicable, Bidder/Proposer assures that it will meet or exceed the minimum employment goals of 10% minority and 2% women during the term of its contract with City, or request a waiver of the goals. **NOTE: This paragraph is applicable ONLY if you are submitting a bid/proposal on a construction contract that was estimated by the City, prior to solicitation, as requiring more than 800 construction labor hours and costing in excess of \$324,000.00.**
7. I am authorized to make this Affidavit on behalf of the Bidder/Proposer named below as:

_____ of _____ (Title)
(Name of Bidder/Proposer)

Dated: _____ By: _____
(Affiant)

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

My Commission Expires: _____
Notary Public

CONTRACTOR UTILIZATION PLAN/REQUEST FOR WAIVER

Project/Contract Number: _____

Project Title: _____

(Department Project) Department

(Bidder/Proposer)

STATE OF _____)
) ss
COUNTY OF _____)

I, _____, of lawful age and upon my oath state as follows:

- 1. This Affidavit is made for the purpose of complying with the provisions of the MBE/WBE submittal requirements on the above project and the MBE/WBE Program and is given on behalf of the Bidder/Proposer listed below. It sets out the Bidder/Proposer’s plan to utilize MBE and/or WBE contractors on the project.
- 2. The project goals are **0% MBE** and **0% WBE**. Bidder/Proposer assures that it will utilize a minimum of the following percentages of MBE/WBE participation in the above project:

BIDDER/PROPOSER PARTICIPATION: _____% MBE _____% WBE

- 3. The following are the M/WBE subcontractors whose utilization Bidder/Proposer warrants will meet or exceed the above-listed Bidder/Proposer Participation. Bidder/Proposer warrants that it will utilize the M/WBE subcontractors to provide the goods/services described in the applicable Letter(s) of Intent to Subcontract, copies of which shall collectively be deemed incorporated herein). *(All firms must currently be certified by Kansas City, Missouri)*

a. Name of M/WBE Firm _____
Address _____
Telephone No. _____
I.R.S. No. _____

b. Name of M/WBE Firm _____
Address _____
Telephone No. _____

I.R.S. No. _____

c. Name of M/WBE Firm _____
Address _____
Telephone No. _____
I.R.S. No. _____

d. Name of M/WBE Firm _____
Address _____
Telephone No. _____
I.R.S. No. _____

e. Name of M/WBE Firm _____
Address _____
Telephone No. _____
I.R.S. No. _____

f. Name of M/WBE Firm _____
Address _____
Telephone No. _____
I.R.S. No. _____

(List additional M/WBEs, if any, on additional page and attach to this form)

4. The following is a breakdown of the percentage of the total contract amount that Bidder/Proposer agrees to pay to each listed M/WBE:

MBE/WBE BREAKDOWN SHEET

MBE FIRMS:

Name of MBE Firm	Subcontract Supplier/Broker/Contractor	Weighted Amount*	% of Total Value**	Contract
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

TOTAL MBE \$ / TOTAL MBE %: \$ _____ %

WBE FIRMS:

Name of WBE Firm	Subcontract Supplier/Broker/Contractor	Weighted Amount*	% of Total Value**	Contract
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TOTAL WBE \$ / TOTAL WBE %:		\$		%

*“Subcontract Amount” refers to the dollar amount that Bidder/Proposer has agreed to pay each M/WBE subcontractor as of the date of contracting and is indicated here solely for the purpose of calculating the percentage that this sum represents in proportion to the total contract amount. Any contract amendments and/or change orders changing the total contract amount may alter the amount due an M/WBE under their subcontract for purposes of meeting or exceeding the Bidder/Proposer participation.

***“Weighted Value” means the portion of the subcontract amount that will be credited towards meeting the Bidder/Proposer participation. See HRD Forms and Instructions for allowable credit and special instructions for suppliers.

Bidder/Proposer acknowledges that the monetary amount to be paid each listed M/WBE for their work, and which is approved herein, is an amount corresponding to the percentage of the total contract amount allocable to each listed M/WBE as calculated in the MBE/WBE Breakdown Sheet. Bidder/Proposer further acknowledges that this amount may be higher than the subcontract amount listed therein as change orders and/or amendments changing the total contract amount may correspondingly increase the amount of compensation due an M/WBE for purposes of meeting or exceeding the Bidder/Proposer participation

- 6. Bidder/Proposer acknowledges that it is responsible for considering the effect that any change orders and/or amendments changing the total contract amount may have on its ability to meet or exceed the Bidder/Proposer participation. Bidder/Proposer further acknowledges that it is responsible for submitting a Request for Modification or Substitution if it will be unable to meet or exceed the Bidder/Proposer participation set forth herein.
- 7. If Bidder/Proposer has not achieved both the M/WBE goal(s) set for this Project, Bidder/Proposer hereby requests a waiver of the MBE and/or WBE goal(s) that Bidder/Proposer has failed to achieve
- 8. Bidder/Proposer will present documentation of its good faith efforts, a narrative summary detailing its efforts and the reasons its efforts were unsuccessful when requested by the City.
- 9. I hereby certify that I am authorized to make this Affidavit on behalf of the Bidder/Proposer named below and who shall abide by the terms set forth herein:

Bidder/Proposer primary contact: _____
Address: _____
Phone Number: _____

Facsimile number: _____

E-mail Address: _____

By: _____

Title: _____

Date: _____

(Attach corporate seal if applicable)

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

My Commission Expires: _____

Notary Public

LETTER OF INTENT TO Subcontract



Project Name/Title _____

Project Location/Number _____

Check one:

Original LOI: ☐Updated LOI: ☐

PART 1: Prime Contractor agrees to enter into a contractual agreement with M/W/DBE/Section 3 Subcontractor _____ who will provide the following goods/services in connection with the above-reference contract: [Insert a brief narrative describing goods/services to be provided. Broad Categorizations (e.g., "electrical," "plumbing," etc.) or the listing of NAICS Codes in which M/W/DBE Subcontractor is certified are insufficient and may result in denial of this Letter of Intent to Subcontract.]

_____ for an estimated amount of _____ (or _____ % of the total estimated contract value.)
\$ _____

M/WBE Vendor type: Subcontractor/manufacturer (counts as 100% of contract value towards goals) Supplier (counts as 60% of the total dollar amount paid or to be paid by a prime contractor for supplies or goods towards goals)
Broker (counts as 10% of the total dollar amount paid or to be paid by a prime contractor for supplies or goods towards goals)

M/W/DBE/Section 3 Subcontractor is, to the best of Prime Contractor's knowledge, currently certified with the City of Kansas City's Human Relations Department to perform in the capacities indicated herein. Prime Contractor agrees to utilize M/W/DBE Subcontractor in the capacities indicated herein, and M/W/DBE Subcontractor agrees to work on the above-referenced contract in the capacities indicated herein, contingent upon award of the contract to Prime Contractor.

PART 2: This section is to be completed by the M/W/DBE subcontractor listed above. Please attach additional sheets as needed for more than one intended sub-tier contract. **IMPORTANT: Falsification of this document will result in denial and other remedies available under City Code.**

Select one: The M/W/DBE Subcontractor listed above **IS NOT** subcontracting any portions of the above-stated scope of work(s) (Continue to Part 3.)

The M/W/DBE Subcontractor listed above **IS** subcontracting certain portions of the above stated scope of work(s) to:
Company name: _____

Full address: _____

Street number and name _____ City, State and Zip Code _____

Primary contact: _____

Name _____

Phone _____

a) This subcontractor is (circle MBE WBE DBE N/A)

i: If this subcontractor is an M/W/DBE certified with the City of Kansas City, Missouri, a separate Letter of Intent must be attached to this document.

ii. If this subcontractor is NOT a certified M/W/DBE certified with the City of Kansas City, Missouri, the firm must still be listed for reporting purposes but a Letter of Intent is not required.

Scope of work to be performed: _____

The dollar value of this agreement is: ____

PART 3:

**NOTE: SIGNATURES AND NOTARIZATIONS REQUIRED FOR NEW LETTERS OF INTENT (LOI);
SIGNATURES ONLY FOR UPDATED LOI (ADDING VALUE TO EXISTING CONTRACT).**

PRIME CONTRACTOR BUSINESS NAME: _____

Signature: Prime Contractor Print Name

Title Date

State of)

County of)

I, _____, state that the above and foregoing is based on my best knowledge and belief.

Subscribed and sworn to before me, a notary public, on this

day of _____, 20____

My Commission Expires: _____

Notary Public

STAMP:

MWDBE SUBCONTRACTOR BUSINESS NAME: _____

Signature: Subcontractor Print Name

, 20____

Title Date

State of)

County of)

I, _____, state that the above and foregoing is based on

my best knowledge and belief.

Subscribed and sworn to

before me, a notary public, on

this

day of _____

STAMP: My Commission Expires: __

Notary Public

TIMETABLE FOR MBE/WBE UTILIZATION

(This form should be submitted to the City after contract award.)

I, _____, acting in my capacity as _____
(Name) (Position with Firm)
of _____, with the submittal of this Timetable, certify that
(Name of Firm)
the following timetable for MBE/WBE utilization in the fulfillment of this contract is correct and true
to the best of my knowledge.

ALLOTED TIME FOR THE COMPLETION OF THIS CONTRACT

(Check one only)

15 days	_____	75 days	_____	135 days	_____
30 days	_____	90 days	_____	150 days	_____
45 days	_____	105 days	_____	165 days	_____
60 days	_____	120 days	_____	180 days	_____
Other	_____ (Specify)				

Throughout	_____	Beginning 1/3	_____
Middle 1/3	_____	Final 1/3	_____
Beginning 1/3	_____ %	Middle 1/3	_____ %
		Final 1/3	_____ %

PLEASE NOTE: Any changes in this timetable require approval of the Human Relations Department in advance of the change.

If you have any questions regarding the completion of this form, please contact the Department of Human Relations at: (816) 513-1818.

(Signature)

(Position with Firm)

(Date)



REQUEST FOR MODIFICATION OR SUBSTITUTION

BIDDER/PROPOSER/CONTRACTOR: _____**ADDRESS:** _____**PROJECT NUMBER OR TITLE:** _____**AMENDMENT/CHANGE ORDER NO: (if applicable)** _____**Project Goals:** _____ % MBE _____ % WBE**Contractor Utilization Plan:** _____ % MBE _____ % WBE

1. I am the duly authorized representative of the above Bidder/Contractor/Proposer and am authorized to request this substitution or modification on behalf of the Bidder/Contractor/Proposer.

2. I hereby request that the Director of HRD recommend or approve: (check appropriate space(s))

a. _____ A substitution of the certified MBE/WBE firm _____,
(Name of new firm)

to perform _____,
(Scope of work to be performed by new firm)

for the MBE/WBE firm _____ which is currently
(Name of old firm)

listed on the Bidder's/Contractor's/Proposer's Contractor Utilization Plan to

perform the following scope of work: _____.
(Scope of work of old firm)

b. _____ A modification of the amount of MBE/WBE participation currently listed on the Bidder's/Contractor's/Proposer's Contractor Utilization Plan from

_____ % MBE _____ % WBE *(Fill in % of MBE/WBE Participation currently listed on Contractor Utilization Plan)*

TO

_____ % MBE _____ % WBE *(Fill in New % of MBE/WBE Participation requested for Contractor Utilization Plan)*

c. Attach 00450.01 Letter of Intent to Subcontract letter for each new MBE/WBE to be added.

d. Attach a copy of the most recent 00485.01 or on-line M/WBE Monthly Utilization Report

3. Bidder/Contractor/Proposer states that a substitution or modification is necessary because: (check applicable reason(s))

___ The MBE/WBE listed on the Contractor Utilization Plan is non-responsive or cannot perform.

___ The MBE/WBE listed on the Contractor Utilization Plan has increased its previously quoted price without a corresponding change in the scope of work.

___ The MBE/WBE listed on the Contractor Utilization Plan has committed a material default or breach of its contract.

___ Requirements of the scope of work of the contract have changed and make subcontracting not feasible or not feasible at the levels required by the goals established for the contract.

___ The MBE/WBE listed on the Contractor Utilization Plan is unacceptable to the City contracting department.

___ Bidder/Contractor/Proposer has not attempted intentionally to evade the requirements of the Act and it is in the best interests of the City to allow a modification or substitution.

4. The following is a narrative summary of the Bidder's/Contractor's/Proposer's good faith efforts exhausted in attempts to substitute the MBE/WBE firm named above which is currently listed on the Contractor Utilization Plan with other qualified, certified MBE/WBE firms for the listed scope of work or any other scope of work in the project:

5. Bidder/Proposer/Contractor will present documentation when requested by the City to evidence its good faith efforts.

Dated: _____

(Bidder/Proposer/Contractor)

By: _____
(Authorized Representative)

CITY OF FOUNTAINS
HEART OF THE NATION



OR AFFIDAVIT FOR FINAL PAYMENT

Contract Number: _____

KANSAS CITY
MISSOURI

STATE OF _____)

)SS

COUNTY OF _____)

The Undersigned, _____ of lawful
(Name)

age, being first duly sworn, states under oath as follows:

1. I am the _____ of _____ who is the general
(Title) (CONTRACTOR)
CONTRACTOR for the CITY on Project No. _____ and Project Title _____.
2. All payrolls, material bills, use of equipment and other indebtedness connected with the Work for this Project have been paid and all Claims of whatever nature have been satisfied, as required by the Contract.
3. (✓) _____ Prevailing wage does not apply; or

(✓) _____ All provisions and requirements set forth in Chapter 290, Section 290.210 through and including 290.340, Missouri Revised Statutes, pertaining to the payment of wages to workmen employed on public works projects have been fully satisfied and there has been no exception to the full and complete compliance with these provisions and requirements and the Annual Wage Order contained in the Contract in carrying out the Contract and Work. CONTRACTOR has fully complied with the requirements of the prevailing wage law as required in the Contract and has attached affidavits from all Subcontractors on this Project, regardless of tier, affirming compliance with the prevailing wage law as stipulated in the Contract.
4. I hereby certify that (a) at project completion and pursuant to contractor's final request for payment, contractor achieved (____%) Minority Business Enterprise (MBE) participation and (____%) Women Business Enterprise (WBE) participation on this contract, and (b) listed herein are the names of all certified M/WBE subcontractors, regardless of tier, with whom I, or my subcontractors contracted.

1. Name of MBE/WBE Firm _____
Address _____

Telephone Number (____) _____
IRS Number _____
Area/Scope*of Work _____
Subcontract Final Amount _____

2. Name of MBE/WBE Firm _____
Address _____

Telephone Number (____) _____
IRS Number _____
Area/Scope*of Work _____
Subcontract Final Amount _____

List additional subcontractors, if any, on a similar form and attach to the bid.

Supplier** Final Amount: _____

*Reference to specification sections or bid item number.

- (✓) ___ Met or exceeded the Contract utilization goals; or
 (✓) ___ Failed to meet the Contract utilization goals (attach waiver, substitution or modification); or
 (✓) ___ No goals applied to this Project.

CONTRACTOR certifies that each Subcontractor has received full payment for its respective work in connection with the Contract.

If applicable, I hereby certify that (a) at project completion and pursuant to contractor's final request for payment, contractor achieved, company-wide, at least ten percent (10%) minority workforce participation and two percent (2%) women workforce participation and (2) a true and accurate copy of my final project workforce monthly report (HRD Form 00485.02 and final company-wide workforce monthly report (HRD Form 00485.03) are attached. **NOTE: This paragraph is only applicable if you completed a construction contract that was estimated by the City, prior to solicitation, as requiring more than 800 construction labor hours and costing in excess of \$324,000.01. If applicable you MUST attach copies of your final monthly workforce reports.**

7. This affidavit is made in behalf of the CONTRACTOR for the purpose of securing from Kansas City, Missouri, the certification of completion of the Project and receiving payment therefore.
8. If the Contract amount exceeded \$150,000, CONTRACTOR has submitted proof of compliance with the City tax ordinances administered by the City's Commissioner of Revenue and has on file proof of tax compliance from all Subcontractors. If the Contract term exceeded one (1) year, CONTRACTOR has provided proof of compliance with the City tax ordinances administered by the City's Commissioner of Revenue prior to receiving final payment and has on file proof of tax compliance from all Subcontractors prior to the Subcontractor receiving final payment from CONTRACTOR.

CONTRACTOR_

By _____
 (Authorized Signature)

Title _____

On this _ day of __, _____, before me

appeared _____, to me personally known to be the

_____ of the __,

and who executed the foregoing instrument and acknowledged that (s)he executed the same on behalf of

_____ as its free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year first above written.

My commission expires:

 Notary Public



CONTRACTOR AFFIDAVIT FOR FINAL PAYMENT

Contract Number: _____

: _____

STATE OF MISSOURI)
) ss:
COUNTY OF _____)

After being duly sworn the person whose name and signature appears below hereby states under penalty of perjury that:

1. I am the duly authorized officer of the business indicated below (hereinafter Subcontractor) and I make this affidavit on behalf of Subcontractor in accordance with the requirements set forth in Section 290.290, RSMo. Subcontractor has completed all of the Work required under the terms and conditions of a subcontract as follows:

Subcontract with: _____,
Contractor

Work _____ Performed:

Total Dollar Amount of Subcontract and all Change Orders:
\$ _____

City Certified ☐ MBE ☐ WBE ☐ DBE ☐ NA
List certifications:

2. Subcontractor fully complied with the provisions and requirements of the Missouri Prevailing Wage Law set forth in Sections 290.210, RSMo through 290.340, RSMo.

Business Entity Type:	Subcontractor's Legal Name and Address
<input type="checkbox"/> Missouri Corporation	
<input type="checkbox"/> Foreign Corporation	
<input type="checkbox"/> Fictitious Name Corporation	
<input type="checkbox"/> Sole Proprietor	
<input type="checkbox"/> Limited Liability Company	Phone No.
<input type="checkbox"/> Partnership	Fax:
<input type="checkbox"/> Joint Venture	E-
mail: _____	
<input type="checkbox"/> Other (Specify)	Federal ID
No. _____	

I hereby certify that I have the authority to execute this affidavit on behalf of Subcontractor.

By: _____

(Signature) (Print Name)

(Title) (Date)

NOTARY

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

My Commission Expires: _____ By _____

Print Name Title

Attachment - A1

TASK ORDER NO. _____

PROJECT NO. _____

PROJECT TITLE _____

**IN ACCORDANCE WITH MASTER AGREEMENT
EV 2820 ESCO Services**

Supplier Name

Department:	Contractor:
City Representative/ Project Manager:	Contractor Project Manager:
Contact Information:	Contact Information:
Maximum Obligation:	MBE/WBE Commitment (Approved CUP): XX% MBE X% WBE

Note: Customize attachments for Task Order specific purpose.

F. Scope of Services

G. Project Schedule [Optional]

H. Deliverables

I. Attachments to the Task Order

- 1. Attachment ____ Non-Construction Subcontractors Listing
- 2. Attachment ____ Approved Contractor Utilization Plan [If Applicable]
- 3. Attachment _____
- 4. Standard Terms and Conditions
- 5. Purchase Order

J. Additional Information

STANDARD TERMS AND CONDITIONS

Sec. 1. General Indemnification.

A. For purposes of this Section 1 only, the following terms shall have the meanings listed:

a. **Claims** means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys' fees, including attorneys' fees incurred by the City in the enforcement of this indemnity obligation.

b. **Contractor's Agents** means Contractor's officers, employees, subcontractors, successors, assigns, invitees, and other agents.

c. **City** means City, its Agencies, its agents, officials, officers and employees.

B. Contractor's obligations under this Section with respect to indemnification for acts or omissions, including negligence, of City, shall be limited to the coverage and limits of insurance that Contractor is required to procure and maintain under this Contract. Contractor affirms that it has had the opportunity to recover all costs of the insurance requirements imposed by this Contract in its contract price.

C. Contractor shall defend, indemnify and hold harmless City from and against all claims arising out of or resulting from all acts or omissions in connection with this Contract caused in whole or in part by Contractor or Contractor's Agents, regardless of whether or not caused in part by any act or omission, including negligence, of City. Contractor is not obligated under this Section to indemnify City for the sole negligence of City.

D. In no event shall the language in this section constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

Sec. 2. Insurance.

A. Contractor shall procure and maintain in effect throughout the term of this Contract insurance policies with coverage not less than the types and amounts specified in this Section. Contractor must have:

1. Commercial General Liability Insurance Policy: with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:

- a. Severability of Interests Coverage applying to Additional Insureds
- b. Contractual Liability
- c. Per Project Aggregate Liability limit
- d. No Contractual Liability Limitation Endorsement
- e. Additional Insured Endorsement, ISO form CG2010 and CG20 37, current edition, or their

equivalent.

2. Workers' Compensation Insurance: as required by statute, including Employers Liability with limits of: Workers' Compensation Statutory Employers Liability \$100,000 accident with limits of:

\$500,000 disease-policy limit

\$100,000 disease-each employee

3. Commercial Automobile Liability Insurance Policy: with a limit of \$1,000,000, covering owned, hired, and non-owned automobiles. The Policy shall provide coverage on an "any auto" basis and on an "each accident" basis. This insurance policy will be written on a Commercial Automobile Liability form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Contract, by Contractor.

B. The Commercial General Liability Insurance specified above shall provide that City and its agencies, agents, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds, including completed operations, for the services performed under this Contract. Contractor shall provide to City at execution of this Contract a certificate of insurance showing all required coverage and additional insureds. The certificates of insurance will contain a provision stating that should any of the policies described in the certificate be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

C. All insurance policies must be provided by Insurance Companies that have an A.M. Best's rating of "A-V" or better, and are licensed or authorized by the State of Missouri to provide insurance in Missouri.

F. Contractor's failure to maintain the required insurance coverage will not relieve Contractor of its contractual obligation to indemnify the City pursuant to Section 1. If the coverage afforded is cancelled or changed or its renewal is refused, Contractor shall give at least thirty (30) days prior written notice to City. In the event Contractor fails to maintain the required insurance coverage in effect, City may order Contractor to immediately stop work, and upon ten (10) days notice and an opportunity to cure, may pursue its remedies for breach of this Contract as provided for herein and by law.

G. In no event shall the language in this Section constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions and by law.

Sec. 3. Bonds.

A. If the Scope of Work requires Contractor to furnish a Payment Bond and Performance Bond or Performance and Maintenance Bond (collectively hereinafter the Bonds), Contractor shall furnish such Bonds, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract. These Bonds shall remain in effect at least until one (1) year after the date when final payment of the Contract becomes due.

B. All Bonds shall be in the form prescribed by the City, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A certified copy of such agent's authority to act must accompany all Bonds signed by an agent.

C. The Surety must:

1. Be licensed by the State of Missouri to issue bonds in the State of Missouri; and
2. Retain an A.M. Best rating of "B+, Class V" for Bonds in excess of \$200,000.

D. If the surety on any Bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirement of this Section, Contractor shall within twenty (20) days thereafter substitute another Bond and surety, both of which must be acceptable to City.

Sec. 4. Independent Contractor. Contractor is an independent contractor and is not City's agent. Contractor has no authority to take any action or execute any documents on behalf of City.

Sec. 5. Term of Contract. This Contract shall not be a legally binding document until the latest date that all of the following occur: (1) the Bid Form/Contract is signed by all parties; (2) the Bid Form/Contract is approved as to form by the City Law Department; (3) availability of any City funds is certified by the City's Director of Finance; and (4) if required, the effective date of any ordinance passed by the City Council or

resolution passed by the Park Board. This Contract shall end one year later unless a different term of contract is specified in the Scope of Work. The Director is authorized to enter into an amendment to extend the term of this Contract and time of performance for this Contract.

Sec. 6. Payment.

It shall be a condition precedent to payment of any invoice from Contractor that Contractor is in compliance with, and not in breach or default of, all provisions of this Contract. If damages are sustained by City as a result of breach or default by Contractor, City may withhold payment(s) to Contractor for the purpose of set off until such time as the exact amount of damages due City from Contractor may be determined.

Contractor agrees that the City will not process Contractor's request for payment unless the City determines Contractor's request for payment is in proper form, correctly computed, and properly payable under the provisions of this Contract.

Contractor shall be paid monthly unless a different payment schedule is specified in the Scope of Work.

Sec. 7. Governing Law. This Contract shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. The City and Contractor: (1) submit to the jurisdiction of the state and federal courts located in Jackson County, Missouri; (2) waive any and all objections to jurisdiction and venue; and (3) will not raise forum non conveniens as an objection to the location of any litigation.

Sec. 8. Compliance with Laws. Contractor shall comply with all federal, state and local laws, ordinances and regulations applicable to the work and this Contract.

Sec. 9. City's Right to Terminate for Convenience.

A. City may, at any time upon ten (10) days notice to Contractor specifying the effective date of termination, terminate this Contract, in whole or in part.

B. If City terminates this Contract, City shall only be liable for payment for services rendered before the effective date of termination. Contractor shall prepare an accounting of the services performed and direct costs incurred by Contractor up to the effective date of termination and shall return to City any remaining sums within thirty (30) days of the effective date of termination. All work or materials prepared or obtained by Contractor pursuant to this Contract shall become City's property.

C. Contractor agrees it has no right to terminate this Contract for convenience.

Sec. 10. Default and Remedies.

If Contractor shall be in default or breach of any provision of this Contract, City may terminate this contract, suspend City's performance, withhold payment or invoke any other legal or equitable remedy after giving Contractor seven (7) days written notice and opportunity to cure such default or breach.

If City shall be in default or breach of any provision of this Contract, Contractor may terminate this contract or suspend Contractor's performance after giving City fifteen (15) days written notice and opportunity to cure such default or breach.

Sec. 11. Waiver or Modification.

A. Except as specifically provided in this Contract, no provision of this Contract may be waived, modified or amended except in writing signed by City.

B. If the City shall waive any provision of this Contract, it shall not operate as the City's waiver of the Contractor's subsequent breach or noncompliance with the provision. City shall be entitled to invoke any contractual or legal remedy available to City despite any of the City's previous waiver(s) of the Contractor's breach or noncompliance with the Contract provisions.

Sec. 12. Headings; Construction of Contract. The headings of each section of this Contract are for reference only. Unless the context of this Contract clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.

Sec. 13. Severability of Provisions. Except as specifically provided in this Contract, all of the provisions of this Contract shall be severable. If any provision of this Contract is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Contract shall be valid unless the court finds that the valid provisions of this Contract are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Contract could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

Sec. 14. Records.

A. For purposes of this section:

1. "City" shall mean the City Auditor, the City's Internal Auditor, the City's Director of Human Relations, the City Manager, the City department administering this Contract and their delegates and agents.

2. "Record" shall mean any document, book, paper, photograph, map, sound recordings or other material, regardless of physical form or characteristics, made or received in connection with this Contract and all Contract amendments and renewals.

B. Contractor shall maintain and retain all Records for a term of five (5) years that shall begin after the expiration or termination of this Contract and all Contract amendments. City shall have a right to examine or audit all Records and Contractor shall provide access to City of all Records upon ten (10) days written notice from the City.

Sec. 15. Affirmative Action. If this Contract exceeds \$300,000.00 and Contractor employs fifty (50) or more people, Contractor shall comply with City's Affirmative Action requirements in accordance with the provisions of Chapter 3 of City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto; in executing any Contract subject to said provisions, Contractor warrants that it has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the Contract. Contractor shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 3 of City's Code. Contractor shall:

1. Submit, in print or electronic format, a copy of Contractor's current certificate of compliance to the City's Human Relations Department (HRD) prior to receiving the first payment under the Contract, unless a copy has already been submitted to HRD at any point within the previous two calendar years. If, and only if, Contractor does not possess a current certification of compliance, Contractor shall submit, in print or electronic format, a copy of its affirmative action program to HRD prior to receiving the first payment under the Contract, unless a copy has already been submitted to HRD at any point within the previous two calendar years.

2. Require any Subcontractor awarded a subcontract exceeding \$300,000.00 to affirm that Subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.

3. Obtain from any Subcontractor awarded a subcontract exceeding \$300,000.00 a copy of the Subcontractor's current certificate of compliance and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed. If, and only if, Subcontractor does not possess a current certificate of compliance, Contractor shall obtain a copy of the Subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed.

City has the right to take action as directed by City's Human Relations Department to enforce this provision. If Contractor fails, refuses or neglects to comply with the provisions of Chapter 3 of City's Code, then such failure shall be deemed a total breach of this Contract and this Contract may be terminated, canceled or suspended, in whole or in part, and Contractor may be declared ineligible for any further contracts funded by City for a period of one (1) year. This is a material term of this Contract.

Sec. 16. Minority and Women's Business Enterprises. City is committed to ensuring that minority and women's business enterprises (MBEs/WBEs) participate to the maximum extent possible in City contracts. If this Contract contained DBE or MBE and/or WBE goals, Contractor certifies that it shall implement its Contractor Utilization Plan, which is incorporated herein as part of the Bid Form/Contract. Contractor shall comply with all of the requirements imposed by the City's HRD Forms and Instructions for Non-Construction Bids and its Contractor Utilization Plan. Contractor's compliance with this Section is a material part of this Contract.

Sec. 17. Tax Compliance. If the Contract Price exceeds \$150,000.00, Contractor shall provide proof of compliance with the City's Business License and Earnings and Profits Tax ordinances (City taxes) from the City's Commissioner of Revenue. Contractor's proof of compliance with City taxes is a precondition to the City making the first payment under this Contract and any contract renewal.

Sec. 18. City's Buy American and Missouri Preference Policies. It is the policy of the City that any manufactured goods or commodities used or supplied in the performance of any City contract or any subcontract thereto shall be manufactured or produced in the United States whenever possible. Pursuant to Section 71.140 RSMo., preference shall be given to materials, products, supplies and all other articles produced, manufactured, made or grown within the State of Missouri.

Sec. 19. Assignability & Subcontracting.

(a) Assignability. Contractor shall not assign or transfer any part or all of Contractor's obligation or interest in this Contract without prior written approval of City. If Contractor shall assign or transfer any of its obligations or interests under this Contract without the City's prior written approval, it shall constitute a material breach of this Contract. This provision shall not prohibit contractor from subcontracting as otherwise provided for herein.

(b) Subcontracting. Contractor shall not subcontract any part or all of Contractor's obligations or interests in this Contract unless the subcontractor has been identified in a format required by City. If Contractor shall subcontract any part of Contractor's obligations or interests under this Contract without having identified the subcontractor, it shall constitute a material breach of this Contract. The utilization of subcontractors shall not relieve Contractor of any of its responsibilities under the Contract, and Contractor shall remain responsible to City for the negligent acts, errors, omissions or neglect of any subcontractor and of such subcontractor's officers, agents and employees. City shall have the right to reject, at any point during the term of this Contract, any subcontractor identified by Contractor, and to require that any subcontractor cease working under this Contract. City's right shall be exercisable in its sole and subjective discretion. City shall not be obligated to pay or be liable for payment of any monies which may be due to any subcontractor. Contractor shall include in any subcontract a requirement that the subcontractor comply with all requirements of this Contract in performing Contractor's services hereunder.

Sec. 20. Conflicts of Interest. Contractor certifies that no officer or employee of City has, or will have, a direct or indirect financial or personal interest in this Contract, and that no officer or employee of City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Contractor in this Contract.

Sec. 21. Rules of Contract Construction. City and Contractor agree that this Contract shall be construed without regard to any presumption or other rule requiring construction of the Contract against the party causing the contract to be drafted.

Sec. 22. Reports. Contractor shall provide City detailed reports of actual Contract usage by contract category each quarter and annually at no cost to the City.

Sec. 23. Notices. All notices required by this Contract shall be in writing sent by facsimile, regular U.S. mail, postage prepaid or commercial overnight courier to the person and address listed on the Bid Form/Contract if to the Contractor and to the City person and address listed on the Acceptance of Bid portion of the Bid Form/Contract. All notices are effective on the date facsimiled, mailed or deposited with courier.

Sec. 24. Extension of Contract Term. City shall have a unilateral right to extend the term of this Contract beyond the expiration of the initial contract term and all contract renewal terms until the City has executed a new contract.

Section 25. Employee Eligibility Verification.

If this contract exceeds five thousand dollars(\$5,000.00), Contractor shall execute and submit an affidavit, in a form prescribed by City, affirming that Contractor does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S.C. § 1324a(h)(3).

Contractor shall attach to the affidavit documentation sufficient to establish Contractor's enrollment and participation in an electronic verification of work program operated by the United States Department of Homeland Security(E-Verify) or an equivalent federal work authorization program authorized by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986.

Contractor may obtain additional information about E-Verify and enroll at www.dhs.gov/xprevprot/program/gc_1185221678150shtm . For those Contractors enrolled in E-Verify, the first and last pages of the E-Verify Memorandum of Understanding that Contractor will obtain upon successfully enrolling in the program shall constitute sufficient documentation for purposes of complying with this Section. Contractor shall submit the affidavit and attachments to City prior to execution of the Contract, or at any point during the term of the Contract if requested by City.

Sec. 26. Quality Services Assurance Act. If this Contract exceeds \$160,000.00, Contractor certifies Contractor will pay all employees who will work on this Contract in the city limits of Kansas City, Missouri at least \$12.50 per hour in compliance with the CITY's Quality Services Assurance Act, Section 3-66, Code of Ordinances or City has granted Contractor an exemption.

Sec. 27. Anti-Discrimination Against Israel. If this Contract exceeds \$100,000.00 and Contractor employs at least ten employees, pursuant to Section 34.600, RSMo., by executing this Contract, Contractor certifies it is not currently engaged in and shall not, for the duration of this contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.



EMPLOYEE ELIGIBILITY VERIFICATION AFFIDAVIT

(Required for any contract with the City of Kansas City, Missouri in excess of \$5,000.00)

STATE OF Missouri)
) ss
COUNTY OF Jackson)

On this 18th day of March, 2022, before me appeared
Darrell DeMoss, personally known by me or otherwise
proven to be the person whose name is subscribed on this affidavit and who, being duly sworn,
stated as follows:

I am of sound mind, capable of making this affidavit, and personally swear or affirm that
the statements made herein are truthful to the best of my knowledge. I am the
Director of Operations (title) of Schneider Electric
(business entity) and I am duly authorized, directed or empowered to act with full authority on
behalf of the business entity in making this affidavit.

I hereby swear or affirm that the business entity does not knowingly employ any person
in connection with the contracted services who does not have the legal right or authorization
under federal law to work in the United States as defined in 8 U.S.C. § 1324a(h)(3).

I hereby additionally swear or affirm that the business entity is enrolled in an electronic
verification of work program operated by the United States Department of Homeland Security (E-
Verify) or an equivalent federal work authorization program operated by the United States
Department of Homeland Security to verify information of newly hired employees, under the
Immigration Reform and Control Act of 1986, and that the business entity will participate in said
program with respect to any person hired by the business entity to perform any work in
connection with the contracted services. I have attached hereto documentation sufficient to
establish the business entity's enrollment and participation in the required electronic verification
of work program.

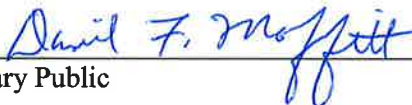
I am aware and recognize that unless certain contractual requirements are satisfied and affidavits obtained as provided in Section 285.530, RSMo, the business entity may face liability for violations committed by its subcontractors, notwithstanding the fact that the business entity may itself be compliant.

I acknowledge that I am signing this affidavit as the free act and deed of the business entity and that I am not doing so under duress.



Affiant's signature

Subscribed and sworn to before me this 21st day of March, 2022.



Notary Public

My Commission expires:

9/12/2023





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/24/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MARSH USA INC. 99 HIGH STREET BOSTON, MA 02110 Attn: Boston.CertRequest@Marsh.com Fax: 212-948-4377		CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS: FAX (A/C, No):															
INSURED Schneider Electric Holdings, Inc. 1111 Pasquinelli Drive, Suite 100 Westmont, IL 60559		INSURER(S) AFFORDING COVERAGE <table border="1"> <tr> <th>INSURER</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A : National Union Fire Ins Co Pittsburgh PA</td> <td>19445 <i>AV</i></td> </tr> <tr> <td>INSURER B : HDI Global Insurance Company</td> <td>41343 <i>AV</i></td> </tr> <tr> <td>INSURER C : AIU Insurance Co.</td> <td>19399 <i>AV</i></td> </tr> <tr> <td>INSURER D : Lexington Insurance Company</td> <td>19437 <i>AV</i></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>		INSURER	NAIC #	INSURER A : National Union Fire Ins Co Pittsburgh PA	19445 <i>AV</i>	INSURER B : HDI Global Insurance Company	41343 <i>AV</i>	INSURER C : AIU Insurance Co.	19399 <i>AV</i>	INSURER D : Lexington Insurance Company	19437 <i>AV</i>	INSURER E :		INSURER F :	
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COVERAGES **CERTIFICATE NUMBER:** NYC-011295359-01 **REVISION NUMBER:** 3

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liability GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	X	6862538	01/01/2022	01/01/2023	EACH OCCURRENCE \$ 5,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 5,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 5,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMP/OP AGG \$ 5,000,000
SURETY VERIFIED BY: Daniel Little 4/11/2022							
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY	X	X	6631153 (AOS) 6631154 (MA) 6631152 (VA)	01/01/2022	01/01/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 5,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB DED RETENTION \$	X		CUD11986-10	01/01/2022	01/01/2023	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		X	WC020608795 (AOS) Additional WC/EL policies are shown on the following page	01/01/2022	01/01/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 5,000,000 E.L. DISEASE - EA EMPLOYEE \$ 5,000,000 E.L. DISEASE - POLICY LIMIT \$ 5,000,000
D	PROFESSIONAL E&O LIABILITY			024063291 POLICY IS CLAIMS MADE	01/01/2022	01/01/2023	EACH CLAIM / AGGREGATE \$ 5,000,000 SIR: \$ 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 City of Kansas City, MO is included as additional insured with respect to General Liability and Auto Liability per the endorsement(s) attached. This insurance is primary and non-contributory over any existing insurance and limited to liability arising out of the operations of the named insured for General Liability and Automobile Liability per the endorsement(s) attached. Waiver of Subrogation is included in favor of the Certificate Holder under General Liability, Auto Liability, and Worker's Compensation per the endorsement(s) attached.

CERTIFICATE HOLDER

CANCELLATION

City of Kansas City, MO Attn: Brandon Illoio 414 E. 12th Street, 17th Floor Kansas City, MO 64106	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Marsh USA Inc.</i>
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KANSAS CITY
MISSOURI

Finance Department

Revenue Division

1118 Oak Street
Kansas City, MO 64106-2786

Phone: (816) 513-1120
Fax: (816) 513-1264
Email: revenue@kcmo.org
kcmo.gov/kctax

C/O DMA
SCHNEIDER ELECTRIC BLDGS AMERICAS
PO BOX 80600
INDIANAPOLIS IN 46280-0600

Letter Id: L2049494272
Date: 25-Mar-2022
Taxpayer Id: **-***6352



TAX CLEARANCE STATUS: APPROVED

As of this date, this notice is to inform you that SCHNEIDER ELECTRIC BLDGS AMERICAS is current with all taxes and license fees with the City of Kansas City, Mo., Finance Department/ Revenue Division.

Please note this could change if we perform a full review of your accounts in the future. We will let you know if we need to review your accounts. You will need to pay any amounts that are found due at that time.

Mari Ruck
Commissioner of Revenue

Visit kcmo.gov/quicktax to view the status of your account and for online filing.



STATE OF MISSOURI



John R. Ashcroft
Secretary of State

CORPORATION DIVISION
CERTIFICATE OF GOOD STANDING

I, JOHN R. ASHCROFT, Secretary of State of the STATE OF MISSOURI, do hereby certify that the records in my office and in my care and custody reveal that

SCHNEIDER ELECTRIC BUILDINGS AMERICAS, INC.

using in Missouri the name

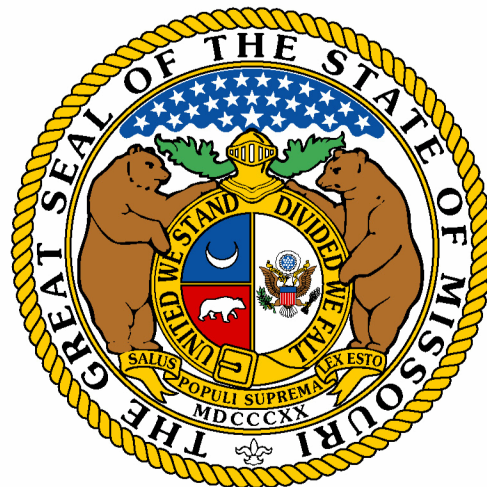
SCHNEIDER ELECTRIC BUILDINGS AMERICAS, INC.
F00493699

a DELAWARE entity was created under the laws of this State on the 26th day of February, 2001, and is Good Standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I hereunto set my hand and cause to be affixed the GREAT SEAL of the State of Missouri. Done at the City of Jefferson, this 17th day of March, 2022.


Secretary of State

Certification Number: CERT-03172022-0089





Kansas City

414 E. 12th Street
Kansas City, MO
64106

Legislation Text

File #: 220178

ORDINANCE NO. 220178

Authorizing the Manager of Procurement Services to execute three Citywide Energy Performance Contracts (ESCO) with Honeywell International Inc., Schneider Electric S.E., and Willdan Group Inc. for Energy Service Companies (ESCO) services; and authorizing six successive one-year renewal options.

WHEREAS, Resolution No. 170484 reaffirms Kansas City's commitment to take action to reduce greenhouse gas emissions and mitigate the impacts of climate change; and

WHEREAS, Resolution No. 18100 directs the City Manager to achieve Energy Star certification for 90% of all eligible municipal buildings of 25,000 square feet or more by no later than December 31, 2023, in order to make progress towards the City's commitment to achieve targets set out by the Paris Climate Agreement; and

WHEREAS, there are no financial obligations under this master agreement; and

WHEREAS, all funding requirements will be evaluated under individual task order contract; and

WHEREAS, the energy performance contract will include energy and operations analysis for savings and improvement opportunities in municipal buildings; and

WHEREAS, the Director of General Services and staff will determine the facilities to audit for maximum impact and savings; NOW, THEREFORE,

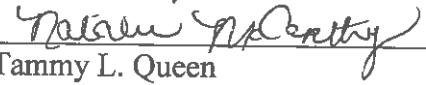
BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That the Manager of Procurement Services is authorized to execute Contract No. EV2820 A, B, & C with Honeywell International Inc., Schneider Electric S.E., and Willdan Group Inc. for ESCO services. A copy of the contracts are on file in the office of Procurement Services Division's General Services Department.


Section 2. That the Manager of Procurement Services is authorized to execute six successive one-year renewal options for this contract without additional Council approval.

File #: 220178

The City has not financial obligations under both this Ordinance and Contract until the Manager of Procurement Services issues a Purchase Order which shall be signed by the City's Director of Finance certifying there is a balance, otherwise unencumbered, to the credit of the appropriation to which the expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment will be made, each sufficient to meet the obligation incurred in the Purchase Order.


for Tammy L. Queen
Director of Finance

Approved as to form and legality:


Nelson Munoz
Assistant City Attorney



Authenticated as Passed


Quinton Lucas, Mayor

Marilyn Sanders, City Clerk

MAR 10 2022
Date Passed