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OF THE CONTRACT FOR CONSTRUCTION

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GENERAL CONDITIONS OF THE CONTRACT
FOR CONSTRUCTION
University of Kentucky
Capital Construction Section

These General Conditions and are binding upon the Contractor and all Subcontractors as each are subject to the provisions contained herein.

ARTICLE 1 - DEFINITIONS

1.1 Wherever used in these General Conditions or in other Contract Documents, the following terms have the meaning indicated which are applicable to both the singular and plural thereof:

1.1.1 CONSULTANT - The term "Consultant" means the person and/or entity, either Architect, Engineer or other Consultant, who is identified as such in the Contract Documents.

1.1.2 CALENDAR DAY - The term "Calendar Day" means a day of twenty-four hours measured from midnight to the next midnight.

1.1.3 CHANGE ORDER - The term "Change Order" means a written order to the Contractor signed by the Owner, issued after the execution of the Contract, directing a change in the Work or an adjustment in the Contract Amount or the Contract Time. A Change Order may be an agreed change by the Contractor and the Owner or it may be an unilateral change by the Owner.

1.1.4 CONSTRUCTION MANAGER - The term "Construction Manager" means the person or entity employed by the Owner under a separate contract to provide professional and managerial services to the Project.

1.1.5 CONTRACT - The "Contract" consists of all Contract Documents as defined in this Article 1 of the General Conditions.

1.1.6 CONTRACT AMOUNT - The term "Contract Amount" means the sum stated in the Agreement which represents the total amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents, plus or minus adjustments as provided for in the Contract Documents.

1.1.7 CONTRACT TIME - The term "Contract Time," unless otherwise provided, means the period of time, including authorized adjustments, for the Substantial Completion of the Work. The time begins as directed in the Work Order and continues for the time specified in the Agreement.

1.1.8 CONTRACT DOCUMENTS - The "Contract Documents" include the Agreement of Contract between the Owner and Contractor, (the "Agreement") the General Conditions, the Special Conditions, the Contractor's Form of Proposal, the Contractor's Bonds, the Specifications, Drawings and Addenda issued prior to Execution of the Contract, together with any Change Orders subsequently issued. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Owner and any Subcontractor, or any person or entity other than the Contractor. The Contract Documents do not include the advertisement or invitation to bid, instructions to bidders, sample forms or portions of bid addenda relating to bidding requirements.

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1.1.9 CONTRACTOR - The term "Contractor" means the person, company, corporation, joint venture or other legal entity with whom the Owner has executed the Contract.

1.1.10 FIELD ORDER - The term "Field Order" means a written order issued by the Consultant which clarifies or interprets the Contract Documents, or orders minor changes in the Work and which does not require a Change Order.

1.1.11 KRS REFERENCES - "KRS References" means the "Kentucky Revised Statutes" adopted by the Commonwealth of Kentucky, including all laws that may have been revised, amended, supplemented or new laws enacted.

1.1.12 OWNER - The term "Owner" means the University of Kentucky, a statutory body corporate existing pursuant to Sections 164.100 et seq. of the Kentucky Revised Statutes.

1.1.13 PROJECT - The term "Project" means the total construction of the Work performed under the Contract Documents, which may be the whole or a part, and which may include construction by the Owner or by separate contracts.

1.1.14 PROJECT MANAGER - The term "Project Manager" means the Owner's representative responsible for administration and management of the Project.

1.1.15 PROVIDE - The term "Provide," as used throughout the specifications, shall mean furnish, install and pay for.

1.1.16 SHOP DRAWINGS - The term "Shop Drawings" means drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

1.1.17 SUBCONTRACTOR - The term "Subcontractor" means a person, company, corporation, joint venture or other legal entity having a direct contract with the Contractor for the performance of a part of the Work.

1.1.18 SUBSTANTIAL COMPLETION - The term "Substantial Completion" means the stage or progress of the Work whereby the Project or a designated portion thereof is sufficiently complete in accordance with the Contract Documents, including, but not limited to, the provisions of Article 28 of these General Conditions, so that the Owner can occupy or utilize the Project or the designated portion for its intended use or purpose without interruptions.

1.1.19 WORK - The term "Work" means the scope of construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to perform and complete the Contractor's obligations under the Contract in an expeditious, orderly and workmanlike manner. The Work may constitute the whole or a part of the Project.

1.1.20 WORK ORDER - The term "Work Order" means a written notice by the Owner to the Contractor authorizing the Contractor to commence Work under the Contract and establishing the beginning date from which the time for Substantial and Final Completion shall be established.

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1.1.21 UNIT PRICE - The term "Unit Price" means the amount per unit of measurement for materials or services as described in the bid documents.

ARTICLE 2 - CONSULTANT

2.1 The Consultant will be the Owner's representative during construction and until the Work is complete. The Consultant will advise and consult with the Owner. The Owner's instructions to the Contractor may be forwarded through the Consultant.

2.2 The Consultant will periodically visit the site to become familiar with the progress of the Work, the quality of the Work being provided and to determine if the Work is proceeding in accordance with the Contract Documents. On the basis of these on-site inspections, the Consultant will keep the Owner informed of the progress of the Work, and will guard the Owner against defects and deficiencies in the Work by the Contractor and will certify to the Owner that the Work in place equals or exceeds the amount requested by the Contractor on all applications for progress payments.

2.3 The Consultant will be the interpreter of the requirements of the drawings and specifications and any changes made to the drawings and specifications.

2.4 Claims, disputes, and other matters in question that arise relating to the execution or the progress of the Work shall be referred in writing to the Consultant. The Consultant will provide a response and decision in writing within a reasonable time.

2.5 The Consultant will have the authority to reject Work which does not conform to the Contract Documents or to the required level of quality and performance.

2.6 The Consultant will review and take appropriate action upon receipt of the Contractor's submittals, such as Shop Drawings, product data, and samples. The review of submittals will be for conformance with the design concept of the work, and for compliance with the information provided by the Contract Documents.

2.7 The Consultant's review and response will be completed with reasonable promptness. The Consultant's review of a specific item shall not indicate approval of an assembly of which the item is a component.

2.8 The Consultant will prepare Change Orders for the Owner to direct changes in the Work. Minor changes in the Work, not involving modifications to the contract cost or completion times and that are consistent with the purpose of Work may be directed by the Consultant through Field Orders.

2.9 The Consultant will conduct inspections to determine the dates of Substantial Completion and Final Completion and will receive and forward to the Owner for the Owner's review, written warranties and related documents required by the Contract and assembled by the Contractor.

2.10 The Contractor will accept direction for the Work on the Project only from the Owner's Project Manager or Consultant. Requests for information from the Contractor shall be directed to the Consultant.

ARTICLE 3- CORRELATION AND INTENT OF CONTRACT DOCUMENTS

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3.1 Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly and carefully examined the site of the Work, investigated and understands all conditions which can affect the Work or its cost, including but not limited to, availability of labor, materials, supplies, water, electrical power, roads, access to the site, uncertainties of weather, water tables, the character of equipment and facilities needed to perform the Work, local conditions under which the Work is to be performed, and further, that the Contractor has inspected all documents and finds the documents to be adequate to complete the Work. It is the responsibility of the Contractor to be familiar with and comply with all Federal, State, and local laws, ordinances, and regulations which might affect those engaged in the Work, and to be familiar with the materials, equipment, or procedures used in the Work, or which in any other way could affect the completion of the Work. Any failure by the Contractor or any Subcontractor or material supplier to properly familiarize themselves with the proposed Work shall not relieve the Contractor from the responsibility for completing the Work in accordance with the Contract Documents.

3.2 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. Labor or materials which are necessary to produce the desired result, even though not specifically mentioned in the Contract Documents, shall be included in the Work.

3.3 In the event a question arises regarding the meaning or intent of the Contract Documents, the Contractor shall report it at once to the Consultant. The Consultant shall furnish, with reasonable promptness by whatever means as may be appropriate, additional instructions necessary for the proper execution of the Work. All such drawings and instructions shall be consistent with the Contract Documents, true developments thereof and reasonably inferable there from. The Work shall be executed in conformity therewith and the Contractor shall do no Work without proper drawings and instructions. Items indicated on drawings as "N.I.C." or "Not In Contract" are shown for explanation purposes only and are not to be included in this Contract.

3.4 The Contract Documents are complementary, and what is required by one shall be binding as if required by all. In case of conflicts between the various documents, the order of precedence will be as follows: (1) Addenda, (2) Special Conditions, (3) General Conditions, (4) Technical provisions of the Specifications and (5) Drawings.

3.5 Any notice to the Contractor from the Owner regarding this Contract shall be in writing and delivery and service of such notice shall be considered complete when sent by registered mail to the Contractor at Contractor's last known address. Such notice may also, at the Owner's election, be hand-delivered to the Contractor or his authorized representative.

ARTICLE 4 - PRE-CONSTRUCTION CONFERENCE

4.1 Following the execution of the Contract, a pre-construction conference will be held. Representatives of the Capital Project Management Division, Consultant, Contractor, and all major Subcontractors will be present to discuss the time for construction, methods and plan of operation, authority of the Consultant, procedures for handling shop drawings, progress estimates and requests for payments, and other relevant issues. The time and location of this meeting will be the responsibility of the Consultant in consultation with other interested parties.

ARTICLE 5 - SHOP DRAWINGS

5.1 The Contractor shall submit a shop drawing and product sample submittal schedule to the Consultant establishing dates for the submission of Shop Drawings and product samples prior to the submittal of the Contractor's first application for payment. The schedule shall have been coordinated with all Subcontractors and

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material suppliers as well as the construction schedule and shall allow for adequate and reasonable time for review of the samples and submittals by the Consultant. The Contractor shall be responsible for compliance with the submittal schedule and shall insure that the Submittal Schedule is maintained in order to accurately reflect the status of processing all required submittals.

5.2 The Contractor shall review, approve, and submit product samples and shop drawings to the Consultant, in accordance with submittal procedure and schedule established. The Contractor's stamp of approval on any shop drawing or sample shall constitute a representation to the Owner and Consultant that the Contractor has determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data, or assumes full responsibility for doing so, and that each shop drawing or sample has been reviewed or coordinated with the requirements of the Work and the Contract Documents. Shop drawings and submittal requirements shall not be deemed satisfied until approvable documents are received by the Consultant. Incorrect or incomplete submittals will be returned to the Contractor without action. No claim for additional time or extension of the contract will be considered if such claim is the result of failure by the Contractor to provide correct, accurate, complete and approvable submittals.

5.3 The Consultant will review submittals with reasonable promptness, and take appropriate action or return submittals to the Contractor for corrections as may be required. The Contractor shall make any corrections required by the Consultant for compliance with the Contract and shall return the required number of corrected copies of shop drawings and resubmit new samples until approved. The Contractor shall direct specific attention, in writing, or on resubmitted shop drawings, to revisions other than the corrections called for by the Consultant on previous submissions.

5.4 Where a shop drawing or sample submission is required by the specifications, no related Work shall be commenced until the submission has been accepted by the Consultant. The review and acceptance shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents. The acceptance of a separate item will not indicate acceptance of the assembly in which the item functions. A copy of each accepted shop drawing and product sample shall be kept in good order by the Contractor at the site and shall be made available to the Consultant on request.

5.5 The Consultant's acceptance of Shop Drawings or samples shall not relieve the Contractor from the responsibility for any deviations from the requirements of the Contract Documents unless the Contractor has in writing called the Consultant's attention to such deviation at the time of submission and the Consultant has given written approval to the specific deviation. Any acceptance by the Consultant does not relieve the Contractor from responsibility for errors or omissions in the Shop Drawings.

ARTICLE 6 - LAYING OUT WORK

6.1 The Contractor shall be responsible for all lines, levels and measurements of all Work executed under the Contract. The Contractor shall verify the figures before laying out the Work and will be held responsible for any error resulting from failure to do so. Working from lines and levels established by the property survey or by other Contract Documents, and as shown in relation to the Work, the Contractor will establish and maintain bench marks and other dependable markers to set lines and levels for Work at each area of construction and elsewhere on the site as needed to properly locate each element of the entire Project. The Contractor shall calculate and measure from the bench marks and dependable markers required dimensions as shown (within recognized tolerances if not otherwise indicated), and shall not scale drawings to determine dimensions. The Contractor

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shall advise Subcontractors and trades persons performing Work of marked lines and levels provided for their use in layout Work. The Contractor shall verify layout information shown on drawings as required for the Work.

6.2 The Contractor shall be responsible for coordination of the installation of all elements of the Work, including preparation of coordination drawings if required by the Contract Documents or deemed necessary by the Contractor for performance of the Work.

ARTICLE 7 - PLANS, DRAWINGS, SPECIFICATIONS AND RECORD DRAWINGS

7.1 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, copies of drawings and specifications reasonably necessary for the execution of the Work. The Contractor shall keep one copy of all Contract Documents, including Drawings, Specifications and Shop Drawings on the site, in good order, and a qualified representative of the Contractor shall record on these documents, from day to day as Work progresses all changes and deviations from the Contract Documents. Prior to Substantial Completion, the Contractor shall complete and turn over to the Consultant the As-Built drawings. The As-Built drawings shall consist of a set of drawings which indicate all field changes that were made to adapt to field conditions, changes resulting from Change Orders and all concealed and buried installations of piping, conduit and utility services. All buried and concealed items, both inside and outside the facility, shall be accurately located on the As-Built drawings as to depth and in relationship to not less than two permanent features such as interior or exterior wall faces. The As-Built drawings shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in a contrasting color. For any changes or corrections in the Work which are made subsequent to the Substantial Completion Inspection, revisions shall be made to the As-Built drawings and submitted to the Consultant prior to final payment. Approval of the final payment request shall be contingent upon compliance with these provisions.

7.2 All drawings, specifications and copies thereof, furnished by the Consultant to the Owner are the property of the University of Kentucky. They shall not be used by the Consultant, Contractor, or any Subcontractor on any other Project.

ARTICLE 8 - TEMPORARY UTILITIES

8.1 The Contractor shall provide and pay for, unless modified in the Special Conditions, all temporary conveniences including, but not limited to, wiring, lighting, power and electrical outlets, heat, water, and sanitary facilities required for construction. In the event the Owner elects to make available, at no cost to the Contractor, the electric power required for construction activities, the electric power supplied shall not be utilized as a means to provide temporary heat or for welding.

8.2 The Contractor is responsible for paying all utility costs, whether the costs are from an outside utility company or from the University, for utility services used in the course of completing the Work. The Contractor shall provide temporary heating, ventilation, telephones, water, electricity, portable gas, lighting for the Work, safety lighting, security lighting, trash removal/dumpster service for both Contractor and Subcontractor use during the Project. Work and safety lighting shall be provided continuously during working hours. Security lighting shall be provided at all hours of darkness.

ARTICLE 9 - MATERIALS, EQUIPMENT, APPLIANCES, AND EMPLOYEES

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9.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all materials, labor and personnel, tools, equipment, construction equipment and machinery, utilities, supplies, appliances, transportation, taxes, temporary facilities, licenses, permits and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and the proper execution and completion of the Work safely and without damage to persons and property. The Contractor shall furnish, erect, maintain, and remove at the completion of the Contract, all temporary plants as may be required during the construction period.

9.2 Immediately following the execution of the Contact Documents, the Contractor shall determine the source of supply for all materials and the length of time required for their delivery, including materials of all subcontractors, and order for all materials shall be placed for such materials in sufficient time for delivery to the site and incorporated into the Work when needed to comply with the schedule of Work.

9.3 The Contractor shall immediately notify the Consultant in writing of any problems with the fabrication or ordering of any materials. Unless changes are approved by the Consultant, the Contractor will not be excused for delays in securing materials specified.

9.4 The Contractor or Subcontractors shall not place purchase orders or issue contracts for materials, supplies, equipment and services necessary to complete this Project using the name of the University of Kentucky. All orders placed by the Contractor that are related to this Project must use the name of the Contractor placing the order. The use of the University of Kentucky's name for ordering purposes is strictly prohibited. Payment for all goods and services required for the completion of the Work is the sole responsibility of the Contractor. Any invoices received at the University that are related to this Project will be immediately forwarded to the Contractor. Copies of these invoices will be made and placed in the Contractor's file and proof must be provided that these invoices have been paid in full prior to the processing of the next scheduled application for progress payment.

9.5 The route for delivery of all materials to the Project shall be coordinated with the Owner's Project Manager.

9.6 The Contractor shall be responsible for the proper and adequate storage of materials and equipment. Unless otherwise provided in the Contract Documents, all materials shall be of good quality and new. Workmanship and materials supplied and incorporated into this Work shall be of first quality. The Contractor, if required, shall furnish satisfactory evidence as to the kind and quality of materials.

9.7 The Contractor shall at all times enforce strict discipline and good order among all employees and Subcontractors. The conduct of all individuals performing Work or operations related to the Work is the responsibility of the Contractor. The consumption of alcohol or drugs on the job by any workers is strictly prohibited. Any individual apprehended under the influence of alcohol or drugs on the premises at any time shall be subject to automatic removal from the Project by the Contractor, the Consultant or the Owner. Improper conduct of any kind will not be permitted and may result in the offending individual, Subcontractor or Contractor being barred from the Owner's premises. The Contractor shall not permit the employment on the Project of any person unfit or not skilled in the Work assigned.

9.8 Smoking is prohibited within the confines of buildings at the University of Kentucky except in certain designated smoking areas. A smoking area will be designated at the Pre-Construction Conference. The Contractor's employees or Subcontractors violating this prohibition will be subject to dismissal from the Project.

ARTICLE 10 - ROYALTIES AND PATENTS

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10.1 The Contractor shall pay all royalties and license fees. If a particular process, product or device is specified in the Contract Documents and it is known to be subject to patent rights or copyrights, the existence of such rights shall be disclosed in the Contract Documents and the Contractor is responsible for payment of all associated royalties. To the fullest extent permitted by law the Contractor shall indemnify, hold the Owner harmless and defend all suits, claims, losses or damages resulting from any infringement of patent rights resulting from the incorporation in the Work any design, process, or device specified in the Contract Documents.

ARTICLE 11 - SURVEYS, PERMITS, REGULATIONS, AND STANDARD CODES

11.1 The Owner will furnish only such surveys that are specifically required by the Contract Documents. Approvals, assessments, and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Owner, unless otherwise specified. All required utility tap-on fees payable to **non-governmental agencies** (electric, gas, water, communications systems, etc.) shall be secured and paid for by the Contractor. **As a State agency, the University is generally exempt from utility tap-on fee assessments levied by local governmental agencies, and any such cost should not be included in the Contractor's bid.** In the event such charges are imposed, the University will reimburse the contractor for that cost by Change Order to the Contract. All construction permits, where required by local ordinances, shall be obtained by the Contractor, but no fee shall be charged to or paid by the Contractor as the Owner is exempt from such charges. A Contractor's license fee for doing business in the locale, if applicable, shall be paid for by the Contractor.

11.2 All branches of Work shown on the plans and specifications shall be executed in strict compliance with all state and federal regulations and codes, and shall be in compliance with all national codes when applicable.

11.3 Reference to standards, codes, specifications, and regulations refer to the latest edition of printing in effect at the date of issue shown in the Contract Documents unless another date is implied by the suffix number of the standard. The Contractor shall furnish a final occupancy permit from the proper agency or agencies as required.

11.4 The Contractor shall include in the lump sum bid and the Contractor shall pay sales, consumer, use and similar taxes for materials, equipment and supplies incorporated into the Work unless otherwise specified in the bid documents.

ARTICLE 12 - PROTECTION OF WORK, PROPERTY, AND PUBLIC

12.1 The Contractor shall continuously maintain adequate protection of all Work from damage and shall protect the Owner's property from injury or loss arising in connection with this Contract. The Contractor shall pay for any such damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or caused by agents or employees of the Owner. The Contractor shall adequately protect adjacent property as provided by law and the Contract Documents.

12.2 In an emergency affecting the safety of life, or of the Work, or of adjoining property, the Contractor, without special instruction or authorization from the Consultant or Owner, is obligated to act to prevent such threatened damage, loss or injury.

12.3 Contractors shall maintain fire protection as required by the Kentucky Building Code. Access to the Project site and surrounding buildings must be maintained during construction for local fire truck access. Contractor shall maintain construction to allow access to new, existing or temporarily relocated standpipe, fire

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hydrant connections and fire alarm communication panels pursuant to Section 3018.8 of the Kentucky Building Code. If the Contractor utilizes the Owner's fire protection equipment during the Contract period, lost, consumed or misplaced during the Contract period. The Contractor is responsible for any false alarms caused by dust created in the Work area or dust traveling to areas beyond the Work area due to inadequate dust protection barriers. Should there be a need for any existing or newly installed fire alarm system or parts of a system that requires service to be removed from service or disconnected, prior approval must be obtained from the Owner and the Contractor shall provide alternate protection such as a fire watch until such systems are returned to full normal operations. When work or service is completed on a disabled fire alarm system the Owner shall be immediately notified so the system can be placed in service.

12.4 Contractor and subcontractors are responsible for the security of their own materials, tools and equipment at the Project site.

12.5 Contractor shall provide to the Owner's Project Manager a key to Contractor's field office or job trailer.

ARTICLE 13 - BLASTING

13.1 Blasting is not allowed unless permission is granted in the Special Conditions. Should blasting be allowed by the Special Conditions it shall be completed in accordance with all laws, regulations, ordinances and instructions contained in the Special Conditions.

ARTICLE 14 - CONSTRUCTION AND SAFETY DEVICES

14.1 The Contractor shall provide safety controls for protection of the life and health of employees and visitors. The Contractor will utilize precautionary methods for the prevention of damage to property, materials, supplies, and equipment, and for avoidance of work interruptions in the performance of this Contract. In order to provide such safety control, the Contractor shall comply with all pertinent provisions of the Kentucky Fire Prevention Code, Kentucky Building Code, Kentucky Labor Cabinet's Division of Occupational Safety and Health Program Construction Standards (29 CFR 1926 as adopted by 803 KAR 2:400 through 2:425) and Federal Occupational Safety and Health (Construction) Standards that are in effect at the time the Contract is entered into and during the period in which the Contract is to be performed.

14.2 The Contractor shall provide a written safety program which includes all pertinent written specialty standards such as, but not limited to, Control of Hazardous Energy Sources (Lockout/Tagout), Hazard Communications Program, First Aid, Blood Borne Pathogen Program, Respirator Use Program and Hearing Conservation Program. The Contractor shall require all Subcontractors to have an effective written safety program or be required to follow the Contractor's written safety program.

14.3 The Contractor shall maintain an accurate record of and shall report to Kentucky Labor Cabinet's Division of Occupational Safety and Health in the manner and on the forms prescribed by that Division, exposure data and all accidents resulting in death, traumatic injury, occupational disease. The Contractor shall maintain an accurate record of and shall report to the Owner's Project Manager, any damage to property, materials, supplies, and equipment incident to Work under this Contract.

14.4 The Kentucky Labor Cabinet's Division of Occupational Safety and Health or the Owner's Environmental Health and Safety Division may notify the Contractor of any noncompliance with the foregoing provisions and the corrective actions to be taken. The Contractor shall after receipt of such notice immediately correct conditions.

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Notice delivered to the Contractor or the Contractor's representative at the site of the Work shall be deemed sufficient for this purpose. If the Contractor fails or refuses to comply promptly, the Owner may issue an order stopping all or part of the Work until satisfactory or corrective action has been taken. Failure or refusal to comply with the order will be grounds for stopping all payments due under the Contract to the Contractor. No part of the construction time lost due to any such stop order shall be cause for, or the subject of a claim for, extension of time or for additional costs or damages by the Contractor.

14.5 The Contractor or any Subcontractor shall immediately contact the University of Kentucky's Department of Occupational Health and Safety should they be selected for an inspection by the Kentucky Occupational Safety and Health Compliance Division.

14.6 Compliance with the provisions of the foregoing sections by Subcontractors shall be the responsibility of the Contractor.

14.7 Nothing in the provisions of this Article 14 shall prohibit the U.S. Department of Labor or the Kentucky Department of Labor Division of Occupational Safety and Health from enforcing pertinent occupational safety and health standards as authorized under Federal or State Occupational Safety and Health Standards.

14.8 The Contractor shall take all necessary precautions for the safety of employees on the Work, and shall comply with all applicable provisions of federal, state, and municipal safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the premises where the Work is being performed. If the Contractor or any Subcontractor has questions related to the health or safety required by their written

safety program, they should contact the Kentucky Labor Cabinet Occupational Safety and Health Program Division of Education and Training. The Contractor shall designate a responsible member of the on site Work force as the safety officer and shall report to the Consultant the name of the person selected. The duties of the safety officer include the enforcement of safety regulations.

ARTICLE 15 - HAZARDOUS MATERIALS

15.1 If the Contractor encounters material reasonably believed to be or suspected to be asbestos containing material, lead, polychlorinated biphenyls (PCBs), or other hazardous material, the following procedures must be followed:

15.1.1 The Contractor shall immediately stop Work in the affected area and notify the Owner's Project Manager. The Project Manager will contact the Owner's Environmental Health and Safety unit to arrange for collection of samples, review of existing data, or other testing necessary to confirm the presence of hazardous materials. The Project Manager will notify the Contractor in writing of the results. Until that notification is received, the Work must not continue in the affected area.

15.1.2 If the material is confirmed to be asbestos, lead, polychlorinated biphenyls (PCBs), or other hazardous material, the Owner will take appropriate action to remove the material before the Contractor can continue Work in the affected area.

15.1.3 Unless specified otherwise in the bid documents, the Contractor shall not be required to perform any Work related to asbestos, lead, polychlorinated biphenyls, or other hazardous material. Contractors are advised that certain classes of building materials (thermal system insulation, sprayed or troweled surfacing materials, and

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resilient flooring) installed before 1981 are required by law to be treated as asbestos containing until proven otherwise. These presumed asbestos containing materials must not be disturbed without confirmation from the Owner that asbestos is not present.

15.2 The Owner, the Contractor, and Subcontractors will be under the requirements of the OSHA Hazard Communication Standard (29) CFR 1910.1200. The Contractor and Subcontractors must provide their own written Hazard Communication Program. The Hazard Communication Standard must include: (1) A list of the hazardous chemicals to which the Contractor's employees may be exposed; (2) Statement of the measures that Contractor's employees and Subcontractors may take to lessen the possibility of exposure to the hazardous materials; (3) The location of and access to the MSDSs related to the hazardous chemicals located in the Work area; (4) Procedures that the Contractor's employees and Subcontractors are to follow if they are exposed to hazardous chemicals above the Permissible Exposure Limit (PEL). Material Safety Data Sheets (MSDS) may be reviewed upon request by the Contractor or any subcontractor as they pertain to the Work areas of the Project. Photocopies of the MSDSs may be made by Contractor at its expense.

15.3 The Contractor and Subcontractors shall provide the Owner with a list of any hazardous materials that will be used on the job site that may be exposed to the Owner's employees. The Contractor and Subcontractors shall provide the Owner with copies of Material Data Sheets for materials to be used.

15.4 It is the policy of the Owner that PCB containing equipment will be treated by the Contractor and the Owner in a manner that conforms to the intent of all applicable laws and regulations (primarily 40 CFR Part 761). The following procedures shall be followed by the Contractor and Subcontractors while present on the Owner's Project or other property: (1) Only authorized, trained personnel may inspect, repair, or maintain PCB transformers; and (2) No combustible materials may be stored within a PCB transformer room or within five meters of a PCB transformer. Such materials include, but are not limited to, paints, solvents, plastic, paper, and wood. The Contractor shall not use rooms containing PCB transformers for storage rooms, staging areas, job site offices or break rooms. Violation of this policy may be grounds for dismissal of the offending Contractor from the Project. All PCB transformers at the University of Kentucky are identified by a PCB label as defined in federal regulations. If the Contractor should have a question as to the location of a PCB transformer, it should contact the Owner's Project Manager.

15.5 The contractor shall ensure that NO asbestos-containing materials (including but not limited to: drywall, joint compound, roof mastic and floor tile adhesive) will be install on any University project without prior written approval of the University's Environmental Health and Safety Division. Additionally, the contractor shall submit MSDS sheets and have prior approval before installing any materials that contains hazardous substances or could pose an environmental hazard. If any environmental hazardous materials are installed without written approval of the University, the contractor will be responsible for all material replacement cost, all removal and all other associated damages. Any materials removed shall be taken out in accordance with all applicable federal, state and local regulations.

ARTICLE 16 - INSPECTION OF WORK

16.1 Inspections, tests, measurements or other acts of the Consultant are for the sole purpose of assisting the Consultant determine if the Work, materials, rate of progress, and quantities comply with the Contract Documents. These acts or functions shall not relieve the Contractor from performing the Work in full compliance with the Contract Documents nor relieve the Contractor from any of the responsibility for the Work assigned to it by the Contract Documents. No inspection by the Consultant shall constitute or imply acceptance. Approval of material

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is general and shall not constitute waiver of the Owner's right to demand full compliance with Contract Documents.

16.2 All Work completed and all materials incorporated for the Project are subject to inspection by the Owner, the Consultant or their representatives to determine conformance with the Contract Documents. The Owner, Consultant and their representatives shall at all times have access to the Work whenever it is in preparation or progress. The Contractor shall provide any facilities necessary for sufficient and safe access to the Work to complete any inspections required. The Consultant shall be given timely notification in order to arrange for the proper inspections to be performed on any Work outside of the normal working day or week.

16.3 If the Specifications, the Consultant's instructions, laws, ordinances, or any public authority require any Work to be specially tested or approved, the Contractor shall give the Consultant timely notice of the readiness of the Work for inspection. The Consultant shall promptly make all required inspections. If any portion of the Work should be covered contrary to the request of the Consultant, or to the requirements specifically expressed in the Contract Documents, the Work must be uncovered for inspection and observation and shall be uncovered and replaced at the Contractor's expense.

16.4 If any other portion of the Work has been covered, which the Consultant has not specifically requested to observe prior to being covered, the Consultant, with the Owner's approval, may request to see such Work and it shall be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such uncovered Work is not in accordance with the Contract Documents, the Contractor shall pay all costs for uncovering and replacement of such Work.

ARTICLE 17 - SUPERINTENDENT - SUPERVISION

17.1 The Contractor shall completely and thoroughly direct and superintend the Work in accordance with the highest standard of care for the Contractor's profession so as to ensure expeditious, workmanlike performance in accordance with requirements of the Contract Documents. The Contractor shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures. The Contractor shall be responsible for the acts and omissions of all Subcontractors and persons directly or indirectly employed by the Contractor in the completion of the Work. The Contractor shall be responsible for coordinating and scheduling all portions of the Work unless the Contract Documents give other specific instructions. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by the activities of the Consultant in the administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

17.2 The Contractor shall have a competent superintendent on the Project site at all times during the process of the Work. The superintendent shall have authority to act on the Contractor's behalf with regard to all aspects of performance of this Contract. The superintendent shall have such assistants with individual specialized competencies as may be necessary to fully understand and oversee all aspects of the Work. The Contractor shall also provide administrative, supervisory and coordinating personnel required to fully perform the Work and for interfacing the Work with other work of the Project. The superintendent and all assistants shall be physically fit for their work and capable of going to all locations where Work is being performed. A communication given to the superintendent shall be binding on the Contractor. Immediately after the award of Contract, the Contractor shall submit to the Consultant a list of Contractor's employees and consultants, including names, positions held, addresses, telephone numbers and emergency contact numbers.

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17.3 The superintendent assigned shall not be changed except under the following circumstances: (1) Where the superintendent ceases to be employed by the Contractor, in which case the Contractor shall give timely written notice to the Owner of the impending change of the superintendent and a reasonable explanation for the change; or (2) Where the Owner or the Consultant have reasonable grounds for dissatisfaction with the performance of the superintendent and give written notice to the Contractor of the grounds. In either case, the Contractor shall receive approval from the Owner of the qualifications of the proposed replacement superintendent.

17.4 If the Owner or Consultant determines that the superintendent is not performing, or is incompetent to perform the required Work, the Owner may direct the Contractor to remove the superintendent from the Project and replace the superintendent with an employee who has the necessary expertise and skills to satisfactorily perform the Work.

ARTICLE 18 - CHANGES IN THE WORK

18.1 The Owner, at any time after execution of the Contract, may make changes within the general scope of the Contract or issue additional instructions, require additional Work or direct the deletion of Work. The Owner's right to make changes shall not invalidate the Contract or relieve the Contractor of any obligations under the Contract Documents. All such changes to the Work shall be authorized in writing by Change Order and shall be executed under the conditions of the Contract Document. Any adjustment of the Contract Amount or Time of completion shall be made at the time of ordering such change.

18.2 The cost or credit to the Owner resulting from a change in Work shall be determined in one or more of the following ways:

18.2.1 By unit prices named in the Contract or additional unit prices subsequently agreed upon;

18.2.2 By agreement on a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

18.2.3 By an amount agreed upon by the Contractor and the Owner as a mutually acceptable fixed or percentage fee.

18.3 All lump sum proposals shall include a detailed cost breakdown satisfactory to the Consultant for each component of Work indicating both labor and material costs. In addition, there may be added an amount agreed upon, but not to exceed fifteen percent (15%) of the actual cost, for overhead and profit. This cost breakdown shall be submitted to the Consultant within seven (7) calendar days after receipt of the proposal request.

18.4 If none of the above methods are mutually agreed upon or if the Contractor does not respond promptly, a change may be made by unilateral determination by the Consultant of reasonable costs or savings attributable to the change, including a reasonable allowance for overhead and profit. If this method is utilized, the Contractor shall promptly proceed with the Work involved in the change, upon receipt of a written order signed by the Owner. In such case, the Contractor shall keep and present an itemized accounting of labor, equipment, material and other costs, in such form as may be prescribed by the Consultant.

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18.5 In determining the cost or credit to the Owner resulting from a change, the allowances for all overhead (including home office and field overhead) and profit combined, shall be negotiated and shall not exceed (15%) fifteen percent.

18.6 In all cases where Change Orders are covered by unit prices set forth in the Contract, the value of such changes shall be determined only upon the basis of such unit prices and no additional amount is to be added for extended overhead and profit.

18.7 The Contractor shall keep and present in such form as the Consultant may direct, a correct account of all items comprising the net cost of such Work, together with vouchers. The determination of the Consultant shall be final upon all questions of the amount and cost of extra Work and changes in the Work, and it shall include in such cost, the cost to the Contractor of all materials used, the cost of all labor (including social security, old age and unemployment insurance, fringe benefits to which the employee is entitled, and Worker's compensation insurance), and the fair rental of all machinery used upon the extra Work, for the period of such use, which was upon the Work before or which shall be otherwise required by or used upon the Work before or after the extra Work is done. If the extra Work requires the use of machinery not already on the Project site, or to be otherwise used upon the Work, then the cost of transportation of such machinery to and from the Project site shall be added to the fair rental value. Transportation costs shall not be allowable for distances exceeding one hundred (100) miles.

18.8 The Contractor shall not include in the cost of change of Work any cost or rental of small tools, or any portion of the time of the Contractor or the superintendent, or any allowance for the use of capital, insurance or bond premium or any actual or anticipated profit, or job or office overhead not previously mentioned. These items are considered as being covered under the added amount for general overhead.

18.9 Pending final determination of value, partial payments on account of changes in the Work may be made on recommendation of the Consultant. All Change Orders shall be in full payment and final settlement of all claims for direct, indirect and consequential costs, including costs for delays and time extensions related to items covered and affected. Any such claim not presented by the Contractor for inclusion in the Change Order shall be waived.

18.10 The Consultant may authorize minor changes in the Work which do not involve additional cost or extension of the Contract Time, and which are not inconsistent with the intent of the Contract Documents. Such changes shall be made by a Field Order issued by the Consultant, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such orders promptly. If the Contractor should claim that a Field Order involves additional cost or delay to the completion of the Work, the Contractor shall give the Consultant written notice thereof within ten (10) calendar days after receipt of the written Field Order. If this notification does not occur, the Contractor shall be deemed to have waived any right to claim or adjustment to the contract sum or to the contract completion time.

18.10.1 If the Contractor claims that any instructions by the Consultant involve additional cost or time extension, the Contractor shall give the Consultant written notice thereof within ten (10) calendar days after the receipt of such instructions and before proceeding to execute the change in Work. The written notice shall state the date, circumstances, whether a time extension will be requested, and the source of the order that the Contractor regards as a Change Order. Unless the Contractor acts in accordance with this procedure, any oral order shall not be treated as a change and the Contractor hereby waives any claim for an increase of the Contract amount or extension of the contract time.

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18.11 Requests for extension of time related to changes in the Work shall be submitted in accordance with the requirements of Article 21.8.

ARTICLE 19 - RULES AND MEASUREMENTS FOR EXCAVATION

19.1 If applicable, the following Rules and Measurements shall apply to the use of Unit Prices for the excavation portion of the Work:

19.1.1 Except as provided in this Article 19 for arbitrary measurements, the quantity of excavation shall be its in-place volume before removal.

19.1.2 No allowance will be made for excavating additional material of any nature taken out for the convenience of the Contractor beyond the quantity computed under these "Rules and Measurements."

19.1.3 The quantities of excavation shall be computed from instrument readings taken by the Owner Representative in vertical cross sections located at such intervals that will assure accuracy.

19.1.4 "Trench Excavation" for pipes shall arbitrarily be assumed to be two feet (2') wider than the outside diameter of the pipe barrel and with sides vertical.

19.1.5 The quantities shall be computed from plan size, or if there are no drawings, from actual measurements of the Work in place.

19.1.6 Each unit price shall cover, among other things, engineering (surveying) costs and keeping excavating dry.

19.1.7 Earth excavation for structures will be measured between the vertical planes passing 18 inches beyond the outside of the footings and from the surface of the ground to the neat lines of the bottom of the structure.

19.1.8 Rock excavation for structures will be measured between the vertical planes passing 18 inches beyond the outside of the footings and from the surfaces of the rock to the neat lines of the bottoms of the structures or the actual elevation of the rock ledge.

19.1.9 Rock excavation for pipelines trenches, unless otherwise provided for in the Specifications, shall be measured as follows: An arbitrary width of 18 inches plus the nominal diameter of the pipe multiplied by the depth from the surface the rock to six (6) inches below the invert for pipe 24 inches in diameter or less and eight (8) inches below the invert for all pipe greater than 24 inches in diameter. No additional compensation will be allowed for excavation for bell holes, gates or other purposes. The measurement of rock excavation for manholes shall be in accordance with Section 19.1.8 above.

19.1.10 Unclassified excavation shall be measured in the same manner as earth excavation.

ARTICLE 20 - CONCEALED CONDITIONS

20.1 The Contract Drawings show the approximate location of the existing and new utility lines. These lines have been identified and located as accurately as possible using available information. However, the Contractor is responsible for verifying all actual locations. If utilities require relocation or rerouting that is not shown or

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indicated to be relocated or rerouted, the Contractor shall contact and cooperate with the Consultant to make the required adjustments. Any request for change in the Contract Amount by the Contractor shall be made pursuant to Article 18 of the General Conditions.

20.2 If any charted, uncharted or miss located Utility service is interrupted for any reason, the Contractor will work continuously to restore service to the satisfaction of the Owner at no additional cost to the Owner. Should the Contractor fail to proceed with appropriate repairs in an expedient manner, the Owner reserves the right to have the work/repairs completed and the cost of such work/repairs deducted from the monies due or to become due to the Contractor pursuant to Article 22 of the General Conditions.

20.2.1 If any charted Utility Service, or any uncharted or miss located Utility Service the existence of which could have been discovered by careful examination and investigation of the site of the Work by the Contractor, is interrupted for any reason, the entire cost to restore service to the satisfaction of the Owner shall be paid by the Contractor.

20.3 The Contractor shall promptly, but in no case more than ten (10) days from the time of discovery, and before the conditions are disturbed, notify Consultant in writing of:

20.3.1 Subsurface or latent physical conditions or any condition encountered at the site which differ materially from those indicated in the Contract Documents and which were not known by Contractor or could not have been discovered by careful examination and investigation of the site of the proposed Work;

20.3.2 Unknown and unexpected physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered in the locale or generally recognized as inherent in the Work provided for in this Contractor.

20.3.3 Concealed or unknown conditions in an existing structure which are at variance with the conditions indicated by the Contract Documents, which are of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in this Contract, and which were not known by the Contractor and could not have been discovered by careful examination and investigation of the site of the Work.

20.4 The Consultant shall promptly investigate the conditions discovered. If the Consultant finds that conditions, which are materially different from those ordinarily encountered and generally recognized as inherent in the Work provided for in this Contract, were not known by the Contractor, and could not have discovered by careful examination and investigation of the site of the Work, have caused or would cause a material increase or decrease in the Contractor's cost of construction or the time required for performance of any part of the Work under this contract, the Consultant will recommend and the Owner will make an equitable adjustment in the Contract Amount or the time allotted for performance in the Contract Documents. Failure by the Contractor to provide written notice to the Owner of such claims for additional compensation or time for performance within 10 days of discovery of such conditions shall constitute a waiver by the Contractor of the right to make such claims. The Owner will not pay claims made for lost opportunities, claims made for lost production or production inefficiencies or claims made that are formula based.

20.5 If the Consultant determines that changed conditions do not exist or are not materially different and no adjustment in the Contract Amount or time is warranted, the Contractor shall continue performance of the Contract as directed by the Consultant. No claim of the Contractor under this clause shall be allowed unless the

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required written notice is given and the Consultant is given adequate opportunity to investigate the conditions encountered prior to disturbance. The failure of the Contractor to give the Consultant proper notice of a differing site condition shall not affect the Owner's right to an equitable adjustment of the contract price or time if there is a decrease in the Contract Amount or time required to perform the Work.

ARTICLE 21 - DELAYS AND EXTENSION OF TIME

21.1 It is agreed that time is of essence for each and every portion of this Contract and where additional time is allowed for the completion of any part of the Work under this Contract, the new time limit fixed by such extension shall be of the essence of this Contract. An extension of time shall not be cause for extra compensation under this Contract.

21.2 The Contractor may be granted an extension of time and/or relief from liquidated damages when the delay in completion of the Work is due to:

21.2.1 Any preference, priority, or allocation order duly issued by the government;

21.2.2 Unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not limited to, acts of God, or of the public enemy, acts of the Owner, acts of another contractor in the performance of a contract with the Owner, floods, epidemics, quarantine restrictions, strikes, and freight embargoes.

21.3 Claims for extensions of time and/or relief from liquidated damages, except for weather related claims, must be made in writing not later than ten (10) Calendar Days after the beginning of the delay. Claims for extension of time due to unusual inclement weather shall be made in writing not later than the tenth day of the month following the month in which the delay occurred. Claims for extension of time or relief from liquidated damages shall be stated in numbers of whole or half Calendar Days. The actual dates on which the delay(s) occurred must be stated. In case of weather related claims for extension of time, time extensions shall be granted only because such unusual inclement weather prevented the execution of critical items of the Work.

21.4 The Contract completion time will not be extended for inclement weather or weather claims on Projects where the completion time exceeds (365) three hundred and sixty five calendar days. Extensions of the completion time may be granted for abnormal inclement weather on Projects that have completion times of (365) three hundred and sixty five calendar days or less. Unusual inclement weather as used herein means unusually severe weather which is beyond the normal weather recorded and expected for the locality and/or the season or seasons of the year. Normal weather for the location of the Project shall be determined by records maintained by the United States Environmental Data Service. For the purpose of this Contract, "Unusual Inclement Weather" will be interpreted as those days in excess of the average number of days on which rainfall is 0.01 inch or more or those days in excess of the average number of days on which the maximum temperature is 32 degrees F or below.

21.5 Any claim for extension of time for strikes or lockouts shall be supported by a written statement of facts concerning the strike, including, but not limited to, the dates, the craft concerned, the reason for the strike, efforts to resolve the dispute, and efforts to minimize the impact of the strike on progress.

21.6 Any claim for extension of time for delays in transportation or for failures of suppliers shall be supported by a written statement of facts demonstrating that the delays are beyond the Contractor's control, including, but not limited to, the Contractor's efforts to overcome such delays.

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21.7 The time extensions for changes in the Work will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The Change Order granting the time extension may provide the Contract Completion Date may be extended only for those specific elements so delayed and that the remaining Work will not be altered or may further provide for an equitable readjustment of liquidated damages pursuant to the new Contract completion dates.

21.8 The Contract time will only be adjusted for causes specified above. Extension of time will only be approved by the Consultant if the Contractor can prove such justification supported by CPM data if applicable, and other supporting data that such changes, in fact, are on the critical path and extend the contract completion, and that the Contractor has expended all reasonable effort to minimize its effect on the construction schedule. No additional extension of time will be granted subsequently for claims having the basis in previously approved extensions of time.

21.8.1 In support of requests for an extension of time, the contractor shall submit to the University a written time impact analysis showing the influence of each such request on the project substantial completion date as shown in the most recent updated and approved project CPM schedule. The analysis shall include a partial network diagram ("fragnet") showing the critical path tasks for the project which are impacted by the event giving rise to the request and showing the schedule both prior to and after the event. This "fragnet" shall include the new activities and/or activity revisions proposed to be added to the existing schedule and shall demonstrate the claimed impact on critical path and the project substantial completion date. Time extensions will not be considered in the event such adjustments do not exceed the total or remaining "float" associated with the impacted activities at the time of delay. Requests for an extension of time which are not supported by this information shall not be considered for approval.

21.9 No Change Orders will be approved unless they are incorporated in a revised schedule at the time of Work. All changes and/or additions to the schedule must meet the approval of the Consultant.

21.10 Extensions of time shall be the Contractor's sole remedy for any and all delays. No payment or compensation of any kind shall be made to the Contractor for damages because of impacts, hindrance in the orderly progress of the Work or delay from any cause in the progress of the Work, whether such hindrances or delays be avoidable or unavoidable. The Contractor expressly agrees not to make, and hereby waives, any claim for damages on account of any delay, obstruction, or hindrance for any cause whatsoever, including but not limited to the aforesaid causes. The Contractor agrees that the sole right and remedy in the case of any delay shall be an extension of the time fixed for completion of the Contract. Without limitation, the Owner's exercise of its rights under the changes clause, regardless of the extent or number of such changes, shall not under any circumstances be construed as compensable delays. The Contractor acknowledges that the Contract Amount includes and anticipates any and all delays whatsoever from any cause, whether such delays be avoidable or unavoidable.

ARTICLE 22 - CORRECTION OF WORK BEFORE FINAL PAYMENT

22.1 The Contractor shall promptly remove from the site and replace any material or correct any Work found by the Consultant to be defective or that fails to conform to the requirements of the Contract, whether incorporated in the Work or not, and whether observed before or after Substantial or Final Completion. The Contractor shall bear all costs of correcting such Work or material including the cost of additional professional services necessary, and the cost of repairing or replacing all Work of separate contractors damaged by such removal or replacement.

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22.2 The Consultant will notify the Contractor and the Owner immediately upon its knowledge that additional services will be necessary. The Owner may consent to accept such non conforming Work and materials with an appropriate adjustment in the Contract Amount. Otherwise, the Contractor shall promptly replace and re-execute the Work in accordance with the Contract and without expense to the Owner and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement. If the Contractor fails to correct non conforming Work within a reasonable time, the Owner may take any necessary action to make the necessary corrections. If the Owner makes required corrections for non conforming Work or materials, a Change Order will be issued reflecting an equitable deduction from the Contract Amount. This amount will be deducted from payments due to the Contractor or, if no additional payments are due, Contractor or the Contractor's surety will be responsible for payment of this amount.

ARTICLE 23 - CORRECTION OF WORK AFTER FINAL PAYMENT

23.1 Neither the final certificate of payment nor any provisions in the Contract Documents shall relieve the Contractor of responsibility for materials and equipment incorporated into the Work that fail to meet specification requirements, or for use of faulty materials or poor quality workmanship. If within one year after the date of Substantial Completion of the Work or designated portion thereof, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so. The Contractor shall correct any defects due to these conditions and pay for any damage to other Work resulting from their use. Nothing contained in this clause shall be construed to establish a period of limitation with respect to any obligation of the Contractor under the Contract. The obligation of the Contractor under this section shall be in addition to and not in limitation of any obligations imposed by special guarantees or warranty required by the Contract, given by the Contractor, or otherwise recognized or prescribed by law.

23.2 In addition to being responsible for correcting the Work and removing any non conforming Work or materials from the job site, the Contractor shall bear all other costs of bringing the affected Work into compliance with the Contract requirements. This includes costs of any required additional testing and inspection services, Consultant's services and any resulting damages to other property or to work of other Contractors or of the Owner.

23.3 If the Contractor fails to correct non conforming Work within a reasonable time, the Owner may take necessary actions to make the necessary corrections. If the Owner makes required corrections for non conforming Work or materials after Final Payment to the Contractor the Owner shall be entitled to recover all amounts for such corrections including costs and attorney's fees from Contractor or surety.

ARTICLE 24 - TERMINATION OF CONTRACT FOR CONVENIENCE OF OWNER

24.1 The Owner, by written notice to the Contractor, may terminate this Contract in whole or in part when it is in the interest of the Owner, in the sole discretion of the Owner. In such case, the Contractor shall be paid for all Work in place and a reasonable allowance for profit and overhead on Work done, provided that such payments shall not exceed the total Contract price as reduced by the value of the Work as yet not completed. The Contractor shall not be entitled to profit and overhead on Work not performed.

ARTICLE 25- OWNER'S RIGHT TO STOP WORK

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25.1 If the Contractor fails to correct defective Work as required, or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner by written notice, may order the Contractor to stop the Work or any portion of the Work, until the cause for the order has been eliminated to the satisfaction of the Owner. The Consultant may stop Work without written notice for 24 hours whenever in its professional opinion such action is necessary or advisable to insure conformity with the Contract Documents. The Contractor shall not be entitled to an adjustment in the Contract Time or Amount under this clause since such stoppages are considered to be the fault of the Contractor. The right of the Owner or Consultant to stop Work shall not give rise to a duty on the part of the Owner or Consultant to exercise this right for the benefit of the Contractor or others.

ARTICLE 26 -TERMINATION OF CONTRACT FOR DEFAULT ACTION OF CONTRACTOR

26.1 In addition to its rights under Articles 24 and 25, the Owner may terminate the contract upon the occurrence of any one or more of the following events:

26.1.1 (a) If the Contractor refuses or fails to prosecute the Work (or any separable part) with such diligence as will insure its completion within the agreed upon time; or if the Contractor fails to complete the Work within such time;

26.1.2 (b) If the Contractor is adjudged a bankrupt or insolvent, or makes a general assignment for the benefit of creditors, or if the Contractor or a third party files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws concerning the Contractor, or if a trustee or receiver is appointed for the Contractor or for any of the Contractor's property on account of the Contractor's insolvency, and the Contractor or its successor in interest does not provide adequate assurance of future performance in accordance with the Contract within 10 days of receipt of a request for assurance from the Owner;

26.1.3 (c) If the Contractor repeatedly fails to supply sufficient skilled Workmen or suitable materials or equipment;

26.1.4 (d) If the Contractor repeatedly fails to make prompt payments to Subcontractors or suppliers at any tier, or for labor, materials or equipment;

26.1.5 (e) If the Contractor disregards laws, ordinances, rules, codes, regulations, orders or similar requirements of any public entity having jurisdiction;

26.1.6 (f) If the Contractor disregards the authority of the Consultant or the Owner;

26.1.7 (g) If the Contractor performs Work which deviates from the Contract Documents, and neglects or refuses to correct rejected Work; or

26.1.8 (h) If the Contractor otherwise violates in any material way any provisions or requirements of the Contract Documents.

26.2 Once the Owner determines that sufficient cause exists to justify the action, the Owner may terminate the Contract without prejudice to any other right or remedy the Owner may have, after giving the Contractor and its Surety three days notice by issuing a written Declaration of Default. The Owner shall have the sole discretion to permit the Contractor to remedy the cause for the contemplated termination without waiving the Owner's right to terminate the contract.

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26.3 In the event that the Contract is terminated, the Owner may demand that the Contractor's Surety take over and complete the Work on the Contract. The Owner may require that in so doing, the Contractor's Surety not utilize the Contractor in performing the Work. Upon the failure or refusal of the Contractor's Surety to take over and begin completion of the Work within twenty days after the demand, the Owner may take over the Work and prosecute it to completion as provided below.

26.3.1 In the event that the Contract is terminated and the Contractor's Surety fails or refuses to complete the Work, the Owner may take over the Work and prosecute it to completion in accordance with the laws of the Commonwealth, by contract or otherwise, and may exclude the Contractor from the site. The Owner may take possession of the Work and of all of the Contractor's tools, appliances, construction equipment, machinery, materials, and plant which may be on the site of the Work, and use the same to the full extent they could be used by the Contractor, without liability to the Contractor. In exercising the Owner's right to prosecute the completion of the Work, the Owner may also take possession of all materials and equipment stored at the site or for which the Owner has paid the Contractor but which are stored elsewhere, and finish the Work as the Owner deems expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

26.3.2 If the unpaid balance of the Contract Price exceeds the direct and indirect costs and expenses of completing the Work including compensation for additional professional and Consultant services, such excess shall be used to pay the Contractor for the cost of the Work it performed and a reasonable allowance for overhead and profit. If such costs exceed the unpaid balance, the Contractor or the Contractor's Surety shall pay the difference to the Owner. In exercising the Owner's right to prosecute the completion of the Work, the Owner shall have the right to exercise its sole discretion as to the manner, methods, and reasonableness of the costs of completing the Work and the Owner shall not be required to obtain the lowest figure for Work performed in completing the Contract. In the event that the Owner takes bids for remedial Work or completion of the Project, the Contractor shall not be eligible for the award of such Contract.

26.3.3 The Contractor shall be liable for any damage to the Owner resulting from the termination or the Contractor's refusal or failure to complete the Work, and for all costs necessary for repair and completion of the Project above the amount of the Contract. The Contractor shall be liable for all attorney's fees, costs and expenses incurred by the Owner to enforce the provisions of the Contract.

26.3.4 If liquidated damages are provided in the Contract and the Owner terminates the Contract, the Contractor shall be liable for such liquidated damages until final completion of the Work is achieved.

26.3.5 In the event the Contract is terminated, the termination shall not affect any rights of the Owner against the Contractor. The rights and remedies of the Owner under this Article are in addition to any other rights and remedies provided by law or under this Contract. Any retention or payment of monies to the Contractor by the Owner will not release the Contractor from liability.

26.3.6 In the event the Contract is terminated under this Article, and it is determined for any reason that the Contractor was not in default under the provisions of this Article, the termination shall be deemed a Termination for Convenience of the Owner pursuant to Article 24 and the rights and obligations of the parties shall be determined in accordance with Article 24.

ARTICLE 27 - SUSPENSION OF WORK

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27.1 The Owner or the Consultant may, at any time and without cause, order the Contractor in writing or cause the Contractor to suspend, delay or interrupt all or any part of the Work for such period of time as the Owner may determine to be appropriate for its convenience. Adjustment may be made for any increase in the Contract time necessarily caused by such suspension or delay, in accordance with Article 21.

ARTICLE 28 - TIME OF COMPLETION

28.1 The Contract Time is the specified number of consecutive calendar days following the stipulated commencement of the Work as stated in the Work Order within which the Contractor has to complete the Contract. The Contractor shall begin the Work on the date of commencement as specified in the Work Order. All time limits stated in the Contract Documents are of the essence of the Contract. The end of the Contract Time shall be the date specified by the Consultant on the certificate of Substantial Completion. The time for completion set forth in the Contract is a binding part of the Contract upon which the Owner may rely in planning the use of the facilities to be constructed and for all other purposes.

28.2 Substantial Completion shall mean when the stage of Work is reached that all Work is complete, accessible, operable and usable for its intended use by the Owner; all parts, systems and site Work is 100% complete and cleaned for the Owners full use. Only incidental corrective Work under punch lists and final cleaning (if required) for Owner's full use may remain for Final Completion. The ability to occupy or utilize shall include regulatory authority approval. When the Owner accepts and occupies a portion of the Project, the operation, maintenance, utilities, and insurance of that portion of the Project become the responsibility of the Owner.

28.3 The date of Substantial Completion shall be that date certified by the Consultant in accordance with the following procedures that the Work is sufficiently complete to occupy or utilize as defined above.

28.3.1 When the Contractor considers the entire Work ready for its intended use, the Contractor shall notify the Consultant in writing and request an inspection. The declaration and request shall be accompanied by a list prepared by the Contractor of those items of Work still to be completed or corrected. The failure of the Contractor or Consultant to include any item or items on such list not completed or needing correction shall not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

28.3.2 The Consultant shall, within a reasonable time after receipt of notification from the Contractor of a declaration of Substantial Completion and request for inspection, make such inspection. Prior to the Substantial Completion Inspection and within sufficient time to allow the Consultant's review, the Contractor shall submit all record drawings, catalog data, complete operating and maintenance instructions, manufacturer specifications, certificates, warranties, written guarantees and related documents required by the contract. The Consultant shall review said documents for accuracy and compliance with the Contract Documents and incorporate them into complete operating instructions and deliver them to the Owner.

28.3.3 If the Consultant considers the Work substantially complete, the Consultant shall prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion and the responsibilities between the Owner and Contractor for security, maintenance, heat, utilities and insurance, if not otherwise provided for in the Contract Documents, and a tentative list of items to be completed or corrected, and shall fix the time within which the Contractor shall complete the items listed therein. This time shall not exceed thirty (30) calendar days. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor

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for their written acceptance of the responsibilities assigned to them in the certificate. The Project shall not be deemed substantially complete until the certificate is issued. If, after making the inspection, the Consultant does not consider the Work substantially complete, he will notify the Contractor in writing, giving the reasons therefor.

28.4 The Consultant, upon receipt of written notice from the Contractor that the Work is complete and is ready for final inspection and acceptance, will promptly make such inspection and when the Consultant finds the Work completed and acceptable under the Contract Documents and the Contract fully performed, the Consultant will so notify the Contractor in writing and promptly certify a final Certificate for Payment to the Owner. If the Contractor does not complete the punch items within the time designated, the Owner retains the right to have these items corrected at the expense of the Contractor including all architectural, engineering and inspection costs and expenses incurred by the Consultant and the Owner, and to deduct such costs and expenses from the funds being held in retainage. The Owner shall not be required to release the retainage until such items have been completed.

ARTICLE 29 - LIQUIDATED DAMAGES

29.1 The Owner and the Contractor recognize and agree that time is of the essence of this Contract and that the Owner will suffer financial loss if the Work is not completed within the time specified in the Contract plus any extensions that may be allowed. The parties further recognize the delays, expense and difficulties involved in proving the actual loss suffered by the Owner should the Work not be completed on time. The Owner and the Contractor agree on the amounts stated as liquidated damages in the Agreement. The Owner and Contractor agree that the amount stated as liquidated damages are not intended to be penalties.

29.2 Should the Contractor fail to satisfactorily complete the Work under Contract on or before the date stipulated for Substantial Completion, the Contractor will be required to pay liquidated damages to the Owner for each consecutive Calendar Day that the Owner is deprived of full use of the area beyond the date specified unless otherwise stipulated elsewhere by Owner. After the date for Substantial Completion has been certified by the Consultant the Contractor shall cease to owe liquidated damages until the date established for Final Completion.

29.3 If Final Completion is not achieved by the date established for Final Completion, liquidated damages in the amount stipulated in the Agreement will become due and collectable. The Contract will be considered complete when all Work has been completed and the Certificate of Final Completion has been issued by the Consultant. No deduction or payment of liquidated damages will, in any degree, release the Contractor from further obligations and liabilities to complete the entire Contract. Permitting the Contractor to continue and finish the Work, or any part of it, after expiration of the Contract Time, shall in no way constitute a waiver on the part of the Owner of any liquidated damages due under the Contract.

ARTICLE 30 - PAYMENT TO THE CONTRACTOR

30.1 Payments on account of this Contract shall be made monthly as Work progresses. The Contractor shall submit to the Consultant, in the manner and form prescribed, an application for each payment, and, if required, receipts or other vouchers showing payments made for materials and labor, including payments to Subcontractors. All payments shall be subject to any withholding or retainage provisions of this contract. All payment request documents, except the final payment, shall be submitted in whole dollar amounts. All payment applications from the Contractor shall include line items for overhead, profit and general condition costs.

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30.2 The Consultant shall, within ten (10) working days after receipt of each application for payment, certify approval of payment in writing to the Owner and present the application to the Owner, or return the application to the Contractor indicating in writing its reasons for refusing to approve payment. The Owner, provided no exception is taken to the application for payment submitted by the Consultant, will generally issue payment on or within twenty (20) working days from the date received from the Consultant. A reasonable delay on the part of the Owner in making payment to the Contractor for any given payment shall not be grounds for breach of Contract. The Consultant may refuse to approve the whole or any part of any payment if it would be incorrect to make such presentation to the Owner.

30.3 Neither the final payment nor any part of the remaining retained percentage shall become due until the Contractor delivers to the Owner an affidavit that all payrolls, bills for materials, supplies and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied.

30.4 If payment is requested on the basis of materials and equipment not incorporated in the Work, but delivered and suitably stored at the site or at another location agreed to in writing, the Contractor must furnish the following:

30.4.1 A list of the materials consigned to the Project (which shall be clearly identified), giving the place of storage, together with copies of invoices.

30.4.2 Certification that all items have been tagged for delivery to the Project and that they will not be used for any other purpose.

30.4.3 A letter from the Surety indicating that the Surety agrees to the arrangements and that payment to the Contractor shall not relieve either the Contractor or its Surety of their responsibility to complete the Work.

30.4.4 Evidence of adequate insurance listing the Owner as an additional insured covering the material in storage.

30.4.5 Evidence that representatives of the Consultant have visited the Contractor's place of storage and checked all items listed on the Contractor's certificate. They shall certify, insofar as possible, that the items are in Agreement with the Specifications and approve their incorporation into the Project.

30.5 The Owner will pay 80% of the invoiced value less retainage for materials stored off site providing the above conditions are met.

30.6 The Contractor's signature on each subsequent application for payment shall certify that all previous progress payments received on account of the Work have been applied to discharge in full all of the Contractor's obligations reflected in prior applications for payment.

30.7 Each payment made to the Contractor shall be on account of the total amount payable to the Contractor and the Contractor warrants and guarantees that the title to all materials, equipment and Work covered by the paid partial payment shall become the sole property of Owner free and clear of all encumbrances. Nothing in this Article shall be construed as relieving Contractor from the sole responsibility for care and protection of materials, equipment and Work upon which payments have been made or restoration of any damaged Work or as a waiver of the right of Owner to require fulfillment of all terms of the Contract Documents.

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30.8 Within thirty (30) days of the award of the Contract, and prior to submitting the first application for payment, the Contractor shall submit to the Consultant and the Owner for approval a detailed breakdown of the Contract Amount pursuant to CSI specification divisions divided so as to facilitate payment and correlated to the schedule required by the Contract Documents. The total value of all activities shall add up to the Contract Amount. When approved by the Consultant and the Owner this schedule shall be used as a basis for Contractor's applications for payment and may be used by the Owner to determine costs or credits resulting from changes in the Work. Failure to obtain the approval of the Schedules of Values shall be a basis for withholding payment to the Contractor.

30.9 Payments Withheld - The Owner may withhold any payment in whole or in part or back charge the Contractor to such extent as it may deem advisable to protect the Owner on account of:

- (a) Defective Work not remedied;
- (b) Failure of the Contractor to make payment properly to Subcontractors for material or labor;
- (c) Claims filed or reasonable evidence indicating probable filing of claims by Subcontractors, laborers, suppliers, or others;
- (d) A reasonable doubt that the Contract can be completed for the balance then unpaid;
- (e) The Contractor's failure to perform any of its contractual obligations, default under Contract Documents, or failure to maintain the agreed upon time schedule; or
- (f) Failure to present pay requests in the prescribed form. When the Owner is satisfied that the Contractor has remedied any such deficiency, payment of the amount withheld will be paid.

30.10 Final Payment - When all Work is complete and acceptable and the Contract is fully performed, the Contractor will be directed to submit a final payment application for certification and the entire balance shall be due and payable upon a certification of completion by the Consultant that the Work is in accordance with the Contract Documents.

30.11 Retainage - The Owner will retain 10% of the Contractor's progress payments until Final Completion and acceptance of all Work covered by this Contract as collateral security to insure successful completion of the Work. In no event shall any reduction to retainage be permitted prior to the issuance of the Consultant's Certificate of Substantial Completion. Subsequent to the issuance of such certificate and depending upon the cost involved for the completion and/or correction of punch list items the Consultant may recommend to the Owner, and if so approved by Owner, the amount of retainage might then be reduced and a sufficient sum retained by Owner to cover the uncompleted Work.

30.11.1 Upon issuance of the Certificate of Final Completion by the Consultant and submittal by the Contractor of all required documents and releases, all retained amounts shall be paid to the Contractor as part of the Final Payment.

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30.11.3 In addition to the retainage set forth above, the Owner may withhold from any monthly progress payments or nullify any progress payments in whole or in part as necessary to protect the Owner from loss on account of:

30.11.3.1 Defective Work which has not been remedied or completed Work which has been damaged requiring correction or replacement;

30.11.3.2 If the Owner has been required to correct Defective Work or complete Work which the Contractor has failed or refused to correct or complete;

30.11.3.3 If the Contractor has failed to perform any of its obligations under the Contract;

30.11.3.4 If the Contractor has failed to make payment properly to Subcontractors, suppliers, material suppliers, or laborers.

30.11.3.5 Amounts to be withheld as liquidated damages for failure to complete the Project in the allotted contract time. When the Owner is satisfied that the Contractor has remedied any such deficiency, payments shall be made of the amount being withheld on the next scheduled application for payment.

ARTICLE 31 - CONTRACTOR'S PAYMENT TO SUBCONTRACTOR

31.1 The Contractor shall promptly pay each Subcontractor upon receipt of payment from the Owner the amount to which said Subcontractor is entitled, reflecting the percentage actually retained from payments to the Contractor on account of such Subcontractor's work. The Contractor shall, by an appropriate Agreement with each Subcontractor, require each Subcontractor to make payments to their Subcontractors, vendors and suppliers in similar manner.

31.2 The Consultant may, on request, furnish to any Subcontractor information regarding the percentages of completion applied for by the Contractor and the action thereon by the Consultant.

31.3 Neither the Owner nor the Consultant shall have any obligation to make payment to any Subcontractor except as may otherwise be required by law.

ARTICLE 32- PROGRESS & SCHEDULING

32.1 Within ten days after the award of the Contract, the Contractor shall prepare and submit to the Owner and the Consultant a construction schedule for the Work. The schedule shall not exceed time limits current under the Contract. Schedules which reflect a duration less than the Contract Time are for the convenience of the Contractor and shall not be the basis of any claim for delay or extension of time. Documents shall be revised at appropriate intervals as required by the condition of the Work and the Project, shall be related to the entire Project to the extent required by the Contract Documents and shall provide for expeditious and practicable execution of the Work. The Contractor shall also submit a payment schedule indicating the percentage of the Contract Amount and the anticipated monthly payments the Owner may make during the Project. The Owner may withhold approval of progress payments until the progress payment schedule and construction schedule have been submitted by the Contractor.

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32.2 The Contractor shall prepare and keep current, for the Consultant's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Consultant reasonable time to review submittals.

32.3 The Contractor shall conform to the most recent schedules.

ARTICLE 33 - USE OF COMPLETED PORTIONS

33.1 Upon mutual Agreement between the Owner, Contractor, and Consultant, the Owner may use a completed portion of the Project after an inspection is made. Such possession and use shall not be deemed as acceptance of any Work not completed in accordance with the Contract Documents nor shall such possession and use be considered to alter warranty obligations.

ARTICLE 34 - INDEMNIFICATION

34.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, the Consultant and their agents and employees from and against all claims, damages, losses and expenses, including attorney's fees, provided that any such claim, loss, damage or expense: (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (b) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. This basic obligation to indemnify shall not be construed to nullify or reduce other indemnification rights which the Owner would otherwise have.

34.2 In any and all claims against the Owner, the Consultant or any of their agents or employees, by any employee of the Contractor, any Subcontractor, any one directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under Worker's Compensation acts, disability benefit acts or other employee acts.

34.3 The obligations of the Contractor under this Article shall not extend to the liability of the Consultant, his agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Consultant, his agents or employees, provided such giving or failure to give is the primary cause of injury or damage.

ARTICLE 35 - INSURANCE

35.1 The Contractor shall furnish the Owner the Certificates of Insurance or other acceptable evidence that insurance is effective, and guarantee the maintenance of such coverage during the term of the Contract. Each policy of insurance, except Workers Compensation, shall name the University of Kentucky and the directors, officers, trustees and employees of the University as additional insureds on a primary and non-contributory basis as their interest appears. Waiver of subrogation in favor of the University of Kentucky shall apply to all policies.

35.2 The Contractor shall not commence, nor allow any Subcontractor to commence Work under this Contract, until the Owner has reviewed the certificates and approved coverages and limits as satisfying the requirements of the bidding process.

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35.3 Workers' Compensation and Employers' Liability Insurance

The Contractor shall acquire and maintain Workers' Compensation insurance with Kentucky's statutory limits and Employers' Liability insurance with at least \$100,000 limits of liability for all employees who will be working at the Project site. In the event any Work is sublet, the Contractor shall require any Subcontractor to provide proof of this insurance for the Subcontractors' employees, unless such employees are covered by insurance provided by the Contractor.

35.4 Public Liability Insurance.

The Contractor shall acquire and maintain a Broad Form Comprehensive General Liability (CGL) Insurance Policy including premises - operations, products/completed operations, blanket contractual, broad form property damage, real property fire legal liability and personal injury liability coverage. The Insurance Policy must be on an "occurrence" form only, unless approved by the Owner. Contractual liability must be endorsed to include defense costs. Products and completed operations insurance must be carried for two years following completion of the Work. Policies which contain Absolute Pollution Exclusion endorsements are not acceptable. Coverage must include pollution from "hostile fires". Where required by the risks involved, Explosion, Collapse and Underground (XCU) coverages shall be added by endorsement. If the Work involved requires the use of aircraft or helicopters, a separate aviation liability policy with limits of liability of at least \$10,000,000 will be required.

35.4.1 The limits of liability shall not be less than \$500,000 each occurrence combined single limits for bodily injury and property damage. If split limits are used, they shall not be less than \$500,000 for each person and each occurrence for bodily injury and \$250,000 for each occurrence for property damage.

35.4.2 The Contractor shall either:

35.4.2.1. Require each Subcontractor to procure and maintain insurance of the type and limits stated during the terms of the Contract, or,

35.4.2.2. insure the activities of such Subcontractors under a blanket form as shown above.

35.5 Comprehensive Automobile Liability Insurance

The Contractor shall show proof and guarantee the maintenance of insurance to cover all owned, hired, leased or non-owned vehicles used on the Project. Coverage shall be for all vehicles including off the road tractors, cranes and rigging equipment and include pollution liability from vehicle upset or overturn. Policy limits shall not be less than \$500,000 for combined single limits for bodily injury and property damage for each occurrence. As an alternative, split limits of not less than \$500,000 for bodily injury and \$100,000 for property damage for each occurrence shall be maintained.

35.6 Excess Liability Insurance

The Contractor shall acquire and maintain a policy of excess liability insurance in an umbrella form for excess coverages over the required primary policies of broad form comprehensive general liability insurance, comprehensive automobile liability insurance and employers' liability insurance. This policy shall have a

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minimum of \$1,000,000 combined single limits for bodily injury and property damage for each occurrence in excess of the applicable limits in the primary policies. The excess liability policy shall not contain an absolute pollution exclusion and shall include coverages for pollution that may occur due to hostile fires and vehicle upset and overturn. The limits shall be increased as appropriate to cover any anticipated special exposures.

35.7 Builders Risk Insurance

Contractor shall procure and maintain builders risk insurance to cover "all risk" perils on a completed value form in an amount of protection of not less than 100% of the Contract amount. Builders Risk Insurance shall include coverage for the perils of earth movement and flood and the coverage shall not be voided in the event of partial occupancy. The testing exclusion must be deleted from the policy.

35.8 Insurance Agent and Company Insurance as required in the bidding process of the Project, shall be written according to applicable state law in Kentucky. The policies shall be written by an insurer duly authorized to do business in Kentucky in compliance with KRS:304.1-.110.

ARTICLE 36 - PERFORMANCE AND PAYMENT BONDS

36.1 The Contractor shall furnish a Performance Bond in the form provided in the Contract Documents in the full amount of the Contract Amount as security for the faithful performance of the Contract. The Contractor shall also furnish a Payment Bond in the form provided in the Contract Documents in the full amount of the Contract Amount for the protection of all persons performing labor or furnishing materials, equipment or supplies for the Contractor or its Subcontractors for the performance of the Work provided for in the Contract, including security for payment of all unemployment contributions which become due and payable under Kentucky Unemployment Insurance Law. The Performance and Payment Bonds shall be executed by the Contractor and a surety company authorized to conduct business in this Commonwealth, and the Contract must be countersigned by a duly appointed and licensed resident agent.

36.2 Unless the Project is exempt from the prevailing wage requirements of KRS 337.505 through 337.550, the Contractor's bonds shall include a provision to guarantee the faithful performance and payment of the prevailing hourly wage as set forth in the schedule incorporated in the bid documents.

ARTICLE 37 - DAMAGED FACILITIES

37.1 The Contractor shall repair or replace, at no expense to the Owner, any damaged section of existing buildings, paving, landscaping, streets, drives, utilities, etc. caused by Work performed under the Contract or incidental thereto, whether by the Contractor's own forces, Subcontractors or by material suppliers. Such repair or replacement shall be performed by craftsmen skilled and experienced in the trade or craft for the original Work.

37.2 Water damage to the interior of any building, whether a new or existing building, shall be repaired and any materials damaged inside the building, including personal property, shall be repaired or replaced at the full replacement cost.

37.3 For existing buildings, the Contractor, along with the Owner's Representative and Consultant, will tour the Project site to evaluate existing conditions and determine any existing damage before any Work on this Contract is done.

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37.4 Should the Contractor fail to proceed with appropriate repairs in an expedient manner, the Owner reserves the right to have the Work/repairs completed and deduct the cost of such Work/repairs from amounts due or to become due to the Contractor. If the Owner deems it not expedient to repair the damaged Work, or if repairs are not done in accordance with the Contract, an equitable deduction from the Contract price shall be made.

ARTICLE 38- DISPUTE RESOLUTION

38.1 All Contractor's claims and disputes shall first be referred to the Consultant for review and decision. All claims shall be made in writing to the Consultant and Owner, not more than ten days from the occurrence of the event which gives rise to the claim or dispute, or not more than ten days from the date that the Contractor knew or should have known of the claim or dispute. Unless the claim is made in accordance with these requirements, it shall be waived. Any claim not submitted before Final Payment shall be waived. The Consultant shall render a written decision within fifteen days following receipt of a written demand for the resolution of a claim or dispute.

38.2 The Consultant's decision shall be final and binding on the Contractor unless the Contractor submits to the Owner a written notice of appeal within fifteen calendar days of the Consultant's decision. The Contractor must present within fifteen calendar days of the notice to appeal a narrative claim in writing with complete supporting documentation. After receiving the written claim, the Owner will review the materials relating to the claim and may meet with the Contractor to discuss the merits of the claim. The Owner will render a decision within 30 calendar days after receiving the written claim and supporting documentation. The decision of the Owner shall be final and binding. Any failure of the Consultant or Owner to make a decision within the time limit set forth, shall not result in the granting of the Contractor's claim.

38.3 If the Owner does not agree with the Consultant's decision on a claim by the Contractor, the Owner shall notify the Contractor and the Consultant and direct the Contractor to perform the Work about which the claim was made and the Contractor shall proceed with such Work in accordance with the Owner's instruction. If the Contractor disagrees with a decision of the Owner concerning a Contractor's claim, the Contractor shall proceed with the Work as indicated by the Owner's decision.

38.4 The Contractor shall continue to diligently pursue Work under the Contract pending resolution of any dispute.

ARTICLE 39 - CLAIMS FOR DAMAGE

39.1 Should either party to the Contract suffer damage because of wrongful act or neglect of the other party, or of anyone employed by them, or others for whose act they are legally liable, or other controversy arising under the Contract, such claim or controversy shall be made in writing to the other party within 30 days after the first occurrence of the event. Prior to the institution of any action in court, the claim or controversy (together with supporting data) shall be presented in writing to the Senior Vice President for Administration for the University of Kentucky ("Vice President:). The Vice President is authorized, subject to any limitations or conditions imposed by regulations, to settle, comprise, pay, or otherwise adjust the claim or controversy with the Contractor. The Vice President, or designee, shall promptly issue a decision in writing. A copy of the decision shall be mailed or otherwise furnished to the Contractor. The decision rendered shall be final and conclusive unless the Contractor files suit pursuant to KRS 45A.245. If the Vice President does not issue a written decision within one hundred and twenty (120) days after written request for a final decision, or within a longer period as may be established by the parties to the Contract in writing, then the Contractor may proceed as if an adverse decision had been received.

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39.2 Any legal action on the Contract shall be brought in the Franklin Circuit Court and shall be tried by the court sitting without a jury. All defenses in law or equity, except the defense of government immunity, shall be preserved to the Owner. The Owner shall recover from the Contractor all attorney's fees, costs and expenses incurred if the Owner prevails in the litigation of disputes under the Contract. The Contractor shall be liable to the Owner for all attorney's fees, costs and expenses incurred by the Owner to enforce the provisions of the Contract.

ARTICLE 40 - LIENS

40.1 The filing and perfection of liens for labor, materials, supplies, and rental equipment supplied on the Work are governed by KRS 376.195 et seq.

40.2 Statements of lien shall be filed with the Franklin County Clerk and any action to enforce the same must be instituted in the Franklin Circuit Court, pursuant to KRS 376.250 (2).

40.3 The lien shall attach only to any unpaid balance due the Contractor for the improvement from the time a copy of statement of lien, attested by the Franklin County Clerk, is delivered to the Owner, pursuant to the provisions of KRS 376.240.

ARTICLE 41 - ASSIGNMENT

41.1 Neither party to the Contract shall assign the Contract, or any portion thereof without the written consent of the other. The Contractor shall not assign any amount or part of the Contract or any of the funds to be received under the Contract unless the Contractor has the prior written approval of the Owner and the Surety on the Contractor's bond has given written consent to any such assignment.

ARTICLE 42 - SEPARATE CONTRACTS

42.1 The Owner reserves the right to enter into other Contracts in connection with the Project or to perform any work with the Owner's forces. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate its Work with theirs in such manner as the Consultant may direct.

42.1 Upon request of the Contractor, the Consultant or the Owner will provide the Contractor a copy of all available plans, specifications, and other data relating to other contracts or work related to this Work. The Contractor shall examine these documents and shall promptly notify the Consultant or the Owner of any work conflicting with Work to be performed by the Contractor.

42.2 Should the Contractor sustain any damage through any act or omission of any other contractor having a contract with the Owner, the Contractor shall have no claim or cause of action against the Owner for such damage and hereby waives such claim. The Contractor does not waive any claim or cause of action against the other contractor to recover any and all damages sustained by reason of the acts or omissions of such separate contractor. The phrase "acts or omissions" as used in this Article shall be defined to include, but not limited to, any unreasonable delay on the part of any such separate contractor.

42.3 Should the Contractor cause damage to any separate contractor on the Work, and the separate contractor sues the Owner on account of any damage alleged to have been so sustained, the Contractor shall be responsible

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for all costs, fees and expenses incurred by the Owner for defending such proceedings and if any judgment against the Owner arises therefrom, the Contractor shall pay or satisfy it and shall pay all costs, fees and expenses incurred by the Owner.

42.4 If any part of the Contractor's Work depends upon the work of any other contractor, the Contractor shall promptly report to the Consultant any observed defects in such work that render it unsuitable for proper execution connection. The failure to inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of the work, except as to defects which may develop in the other contractor's work after the execution of the work.

42.5 Whenever work being done by the Owner's forces or by other contractors is contiguous to work covered by this Contract, the respective rights of the various parties involved shall be established by the Consultant to secure the completion of the various portions of the Work in general harmony.

ARTICLE 43 - CONTRACTOR/SUBCONTRACTOR RELATIONSHIP

43.1 The Contractor is fully responsible to the Owner for the acts and omissions of the Subcontractors and of persons either directly or indirectly employed by them. The Contractor is responsible for the acts and omissions of persons employed directly by the Contractor and for the coordination of the Work, including placement and fittings of the various component parts. No claims for extra costs as a result of the failure to coordinate the Work, or by acts or omissions of the various Subcontractors will be paid by the Owner.

43.2 The Contractor agrees to bind every Subcontractor by the terms and conditions of the Contract Documents as far as applicable to their portion of the Work. Upon request, the Contractor shall provide copies of any subcontracts and purchase orders to the Owner or Consultant.

43.3 The Contractor shall make no substitution or change in any Subcontractor listed and accepted by the Consultant or Owner except as approved in writing by the Owner. The Contractor shall not employ any Subcontractor or supplier against whom the Owner or the Consultant has made reasonable and timely objection.

43.4 Nothing contained in the Contract Documents shall create any contractual relationship between the Owner and any Subcontractor. The Contractor is hereby notified that it is the Contractor's contractual obligation to settle disputes between Subcontractors. Neither the Owner nor the Consultant will settle disputes between the Contractor and the Subcontractors or suppliers or between Subcontractors or suppliers.

ARTICLE 44 - CASH ALLOWANCE

44.1 The Contractor shall have included in the Contract Amount all allowances stated in the Contract Documents and shall cause the Work so covered to be done as the Consultant may direct. If the actual price for purchasing the "allowed materials" is more or less than the "cash allowance", the Contract Amount shall be adjusted by Change Order accordingly. The adjustment in Contract Amount shall be made on the basis of the purchase price without additional charges for overhead, profit, insurance or any other incidental expenses. The cost of installation of the "allowed materials", unless specifically provided for in the allowance, shall be included in the Contract Amount and not in the allowance.

ARTICLE 45 - PROJECT SITE LIMITS

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45.1 The Contractor shall confine the apparatus, the storage of materials, and the operations of Workmen to Project site limits indicated in and permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials and equipment.

ARTICLE 46 - CLEAN UP

46.1 The Contractor shall at all times keep the premises free from accumulation of waste material or rubbish caused by the operations in connection with the Work. At the completion of the Work, and prior to final inspection and acceptance, the Contractor shall remove all remaining waste materials, rubbish, Contractor's construction equipment, tools, machinery, and surplus materials and shall leave the Work in a clean and usable condition, satisfactory to the Consultant and the Owner. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may perform the cleaning tasks and charge the cost to the Contractor.

ARTICLE 47 - POINTS OF REFERENCE

47.1 The Contractor shall carefully preserve bench marks, reference points and stakes, and in case of willful or careless destruction, the Contractor shall be charged with the resulting expense of replacement and shall be responsible for any mistake that may be caused by their loss or disturbance.

ARTICLE 48 - SUBSTITUTION - MATERIALS AND EQUIPMENT

48.1 Specific references in the Contract Documents to any article, device, equipment, product, material, fixture, patented process, form, method or type of construction, by name, make, trade name, or catalog number, with or without the words "or equal" shall be interpreted as establishing a minimum standard of quality, and shall not be construed as limiting competition.

48.2 Substitution of equipment and materials previously submitted by the Contractor and approved by the Consultant will be considered only for the following reasons:

48.2.1 Unavailability of the materials or equipment due to conditions beyond the control of the supplier.

48.2.2 Inability of the supplier to meet Contract Schedule.

48.2.3 Technical noncompliance to specifications.

48.3 Substitution of other equipment and materials named in the specifications will be allowed provided the proposed substitution will perform the functions called for by the general design, be similar and of equal quality to that specified and be suited to the same use and capable of performing the same function of that specified. The Contractor has burden to prove equality of any substitution requested.

48.4 Inclusion of a certain make or type of materials or equipment in the Contractor's bid proposal shall not obligate the Owner to accept such materials or equipment if they do not meet the requirements of the plans and specifications.

ARTICLE 49 - TEST AND INSPECTION

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49.1 Regulatory agencies of the government having jurisdiction may require any Work to be inspected, tested or approved. The Contractor shall assume full responsibility therefore, pay all costs in connection therewith, and furnish the Consultant the required certificates of inspection, testing or approval.

49.2 The Contractor shall give the Consultant timely notice of readiness of the Work for all inspections, tests or approvals.

49.3 The technical specifications may indicate specific testing requirements to be performed by the Contractor. The cost of all such testing shall be the responsibility of the Contractor. Testing shall be completed using a testing facility or laboratory approved by the Owner.

49.4 The costs of all inspection fees as may be required to construct and occupy the Work shall be the responsibility of the Contractor.

ARTICLE 50 - WARRANTY

50.1 The Contractor warrants to the Owner and the Consultant that all materials and equipment furnished under this Contract shall be new and of the most suitable grade for the purpose intended and that all Work shall be of good quality, free from faults and defects and in conformance with the Contract Documents. If required by the Consultant or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Where there is an approved substitution of material or equipment, the Contractor warrants that such installation, construction, material, or equipment will equally perform the function for which the original material or equipment was specified. The Contractor explicitly warrants the merchantability, the fitness for a particular purpose, and quality of all substituted items in addition to any to any warranty given by the manufacturer and/or supplier. Prior to the Substantial Completion inspection, the Contractor shall deliver to the Consultant all warranties and operating instructions required under the Contract or to which the Contractor is entitled from manufacturers, suppliers, and Subcontractors. All warranties for products and materials incorporated into the Work shall begin on the date of Substantial Completion.

50.2 Neither the final payment, any provision in the Contract Documents nor partial or entire use or occupancy of the premises by the Owner shall constitute an acceptance of Work not done in accordance with Contract Documents or relieve the Contractor or its Sureties of liability with respect to any warranties or responsibilities for faulty materials and workmanship. The Contractor or its sureties shall remedy any defects in Work and any resulting damage to Work at its own expense. The Contractor shall be liable for correction of all damage resulting from defective Work. If the Contractor fails to remedy any defects or damage, the Owner may correct Work or repair damages and the cost and expense incurred in such event shall be paid by or be recoverable from the Contractor or the surety. The Owner will give notice of observed defects with reasonable promptness.

50.3 The Contractor shall guarantee that labor, material, and equipment will be free of defects for a period of one (1) year from the date shown on the Certificate of Substantial Completion unless special conditions or additional warranty periods are required by the contract. The Owner will give notice of observed defects with reasonable promptness. Expendable items and wear from ordinary use are excluded from this warranty.

50.4 Should the Contractor be required to perform tests that must be delayed due to climate conditions, it is understood that such tests will be accomplished by the Contractor at the earliest possible date with provisions of the general warranty beginning upon satisfactory completion of said test. The responsibility of the Contractor under this Article will not be abrogated if the Owner should elect to initiate final payment. If the Owner initiates

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final payment, consent of Contractor's surety acknowledging that Work not yet tested is excepted is required. The Contractor shall warrant that the entire Project will conform to the Contract Documents.

50.5 All costs, attorney's fees and expenses incurred by the Owner as a result of the Contractor's failure to honor any warranty for the Work shall be paid by or recoverable from the Contractor.

ARTICLE 51 - PREVAILING WAGE LAW REQUIREMENTS

51.1 In performing the Work, the Contractor and Subcontractors are required to comply with the wage and hour requirements of KRS 337.505- 337.550, except where the contract meets exemption requirements of KRS 337.010.

51.2 On Projects not exempted under KRS 337.010, the Contractor and Subcontractor shall pay all laborers, workers and mechanics performing Work under this Contract not less than the wages set fourth in the prevailing wage schedule, incorporated as part of the bid and Contract Documents, as determined by the Kentucky Department of Labor in accordance with provisions of KRS 337.505 through KRS 337.550.

51.3 On covered Projects, the Contractor shall post and keep posted in a conspicuous place or places at the site of the Work a copy or copies of the prevailing rates of wages and the working hours as prescribed in the Contract Documents. Any laborer, worker, or mechanic working in excess of eight (8) hours per day or forty (40) hours per week, except in cases of emergency caused by fire, flood, or damage to life or property, shall be paid not less than one and one-half (1 1/2) times the basic hourly rate of pay fixed by law for all overtime worked. The determination of when an emergency exists shall be made by the Consultant or Owner as provided by law. Overtime is to be computed at not less than one and one-half (1 1/2) times the indicated base rate for all hours worked in excess of eight (8) per day, or in excess of forty (40) hours per week. KRS 337.540 permits an employee and employer to agree in writing that the employee will be compensated at a straight time base rate for hours worked in excess of eight (8) hours in any one workday but not more than ten (10) hours worked in any one workday; if such written Agreement is prior to the over actual work or where provided for a collective bargaining agreement. The fringe benefit rate is to be paid for each hour worked at a straight time rate for all hours worked. This applies to all prevailing wage determinations issued by the Labor Cabinet. As a point of clarification, if no collective bargaining agreement exists, employers must have a signed agreement with each employee on the Project. These agreements must be maintained at the employer's office along with the payroll records.

51.4 The Contractor and all Subcontractors shall keep full and accurate payroll records covering all disbursements of wages to their employees to whom they are required to pay not less than prevailing rate of wages. Records shall indicate the hours worked each day by each employee in each classification of Work and amount paid each employee for his work in each classification. Payroll records are to be maintained within the state for one year after completion of the Contract. These records are to be open for inspection and transcript by the Department of Labor at any reasonable time.

ARTICLE 52 - APPRENTICES

52.1 Apprentices (for all classifications of work) shall be permitted to work only under an apprenticeship agreement approved by the Kentucky Supervisor of Apprenticeship and by the Kentucky Apprenticeship and Training, United States Department of Labor.

ARTICLE 53 - GOVERNING LAW

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53.1 This Contract shall be governed by the laws of the Commonwealth of Kentucky.

ARTICLE 54 - NONDISCRIMINATION IN EMPLOYMENT

54.1 During the performance of the Contract, the Contractor agrees as follows:

54.1.1 The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, or disability in employment. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, age, national origin, or disability in employment. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

54.1.3 The Contractor will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representatives of the Contractor's commitments under this Article, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

54.2 Failure to comply with the above nondiscrimination clause constitutes a material breach of Contract.

ARTICLE 55 - AFFIRMATIVE ACTION; REPORTING REQUIREMENTS

55.1 The Contractor and any Subcontractor is exempt from any affirmative action or reporting requirements, under the Kentucky Equal Employment Act of 1978, KRS 45.550 to KRS 45.640 "The Act", if any of the following conditions are applicable:

55.1.1 The Contract or subcontract awarded is in the amount of two hundred and fifty thousand dollars (\$250,000.00) or less, and the amount of the Contract is not a subterfuge to avoid compliance with the provisions of the Act;

55.1.2 The Contractor or Subcontractor utilizes the services of fewer than eight (8) employees during the course of the Contract;

55.1.3 The Contractor or Subcontractor employs only family members or relatives;

55.1.4 The Contractor or Subcontractor employs only persons having a direct ownership interest in the business and such interest is not a subterfuge to avoid compliance with the provisions of The Act.

55.2 The Contractor and any Subcontractor, not otherwise exempted, shall:

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55.2.1 For the length of the Contract, hire minorities from within the drawing area to satisfy the agreed upon goals and timetables. Should the union with which the Contractor has collective bargaining agreements be unwilling to provide sufficient minorities to satisfy the agreed upon goals and timetables, the Contractor shall hire minorities from other sources within the drawing area;

55.2.2 The equal employment provisions of The Act may be met in part by the Contractor subcontracting to a minority contractor or Subcontractor. A minority Contractor or subcontractor shall mean a business that is owned and controlled by one or more persons disadvantaged by racial or ethnic circumstances.

55.2.3 Each Contractor shall, for the length of the Contract, furnish such information as required by The Act and by such rules, regulations and orders issued pursuant thereto and will permit access to all books and records pertaining to its employment practices and Work sites by the contracting agency and the department for purposes of investigation to ascertain compliance with The Act and such rules, regulations and orders issued pursuant thereto.

55.3 If the Contractor is found to have committed an unlawful practice against a provision of The Act during the course of performing under this Contract or subcontract covered under The Act, the Owner may cancel or terminate the Contract, conditioned upon a program for future compliance approved by the Owner. The Owner may also declare such Contractor ineligible to bid on further contracts until such time as the Contractor complies in full with the requirements of The Act.

55.4 Any provisions of The Act notwithstanding, no Contractor shall be required to terminate an existing employee, upon proof that employee was employed prior to the date of the Contract nor hire anyone who fails to demonstrate the minimum skills required to perform a particular job.