DOCUMENT D - GENERAL CONDITIONS OF THE CONTRACT
DA-144 (3-1-01)

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1. DEFINITIONS

The following terms as used in this contract are respectively defined as follows:

A. The term **Project Architect/Engineer** refers to the Project Architect/Engineer employed or designated by the Secretary of the Kansas Department of Administration for professional services in accordance with K.S.A. 75-1253, 75-1254, 75-1256 or employed by the Owner pursuant to K.S.A. 75-5801 et seq., as amended or any designee of the Secretary of Administration who is vested with the authority and responsibility to act as Project Architect/Engineer for this project.

B. **As directed**, rejected, approved, and other words of similar meaning which authorize any exercise of judgment, shall be distinctly understood to mean that such power to direct, reject, and approve shall be vested only in the Project Architect/Engineer, Owner, and the Division of Facilities Management.

C. The **construction representative** or inspector is appointed by and responsible to the Division of Facilities Management. He has the authority to act on behalf of the Owner in matters relating to the prosecution of the Work and its installation in accordance with the Contract Documents, subject to Project Architect/Engineer approval.

D. **Contract**: The agreement between the Contractor and the Owner covering the work to be done.

E. CONTRACT DOCUMENTS

1. The **Contract Documents**, enumerated in the table of contents of this project manual shall form a part of this Contract and the provisions thereof shall be as binding upon the parties hereto as if they were fully set forth.

2. The **Contract Documents** are complementary, and what is required by one shall be as binding as if required by all. The intention of the documents is to include all labor, materials and equipment necessary for the proper execution of the Work.

3. **Contract Documents** consist of the Notice to Bidders, Instructions to Bidders, Form of Bid, Contractor's Performance Bond, Contractor's Public Works Bond to the State, the Contract, General Conditions, Supplemental General Conditions, Specifications, Drawings, Maps, Plats, etc., prepared or furnished by the Project Architect/Engineer, and Addenda, including additions and/or modifications therein incorporated before the execution of the Contract. Contract Documents shall also include written clarifications, Change Orders and written interpretations by the Project Architect/Engineer which are made after execution of the Contract which are not included in Change Orders.

F. The **Contractor** is a person, firm or corporation with whom the Contract is made by the Owner.

G. The **Contractor's superintendent** is the Contractor's chief representative at the Project site or related work area.

H. The **Director** is the head of the Division of Facilities Management and, under certain delegated authority, acts on behalf of the Secretary of Administration.

I. The **Division of Facilities Management** is a unit of the Department of Administration of the State of Kansas authorized to administer, enforce or interpret laws relating to construction on state property.

J. **Final Project Completion** is the date upon which the Contractor shall be completed with all punch list items to the satisfaction of the Owner, Project Architect/Engineer and Division of Facilities Management and all systems are fully tested, balanced, corrected and functional. **Final** completion is to occur on or before the adjusted contract completion date. It is at this point that the Contractor may apply for final payment of the contract sum at which point a Certificate of Project Completion shall be written.

K. The **Owner** is the State agency, representing the State of Kansas, with whom the agreement with the contractor is executed.

L. The **Owner's Representative** is the person(s) appointed by and responsible to the Owner. He acts on behalf of the Owner in matters relating to the execution of the contract.

M. **Partial Occupancy** (for phased projects only) is the date that a separate wing or portion of the building receives final completion as designated above.

N. Wherever the word "**Plan**" is used, the word "Drawing" may be substituted, and vice versa.

O. The **Prime Contractor** is that Contractor identified in the Contract to serve as coordinator and director of all work when separate contracts are awarded for different portions of the project.

P. The term "**provide**" shall be interpreted to mean, "furnish and install in place."

Q. A **Subcontractor** is a person or organization who has a contract with the Contractor to perform any of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative. A lower-tier Subcontractor is a person or organization who has a contract with a Subcontractor or another lower-tier Subcontractor to perform any of the Work at the site. Nothing contained in the Contract Documents shall create contractual relationships between the Owner or the Project Architect/Engineer and any Subcontractor or lower-tier Subcontractor, of any tier.

R. **Substantial completion** is the point at which the Owner, Division of Facilities Management, and the Project Architect/Engineer agree the work, or a designated portion thereof, is sufficiently complete so that the Owner may occupy or use the premises for its intended purpose. Substantial completion will not occur until all items relating to fire exiting, notification, detection, separation or suppression on the fire code footprint of record are completed.

S. The term **"supplier**" also is applicable to those furnishing materials, equipment or supplies to be incorporated in the project whether work performed is at the site or in the factory, or both.

T. A **suitable warehouse** shall be approved by the Project Architect/Engineer, and Owner's Representative and must comply with the following.

1. The facility shall be an independent, commercial warehouse not owned by the Contractor or Supplier.

2. The facility must have established material warehousing procedures.

3. The warehouse shall be located within an acceptable distance of the project site, as established by the Project Architect/Engineer, and Owner's Representative.

4. The Project Architect/Engineer and Owner's Representative shall be provided with all documentation required by Article 30 - Payments to Contractor.

5. All materials for the Owner's project must be stored in the name of Owner.

U. **Surety:** Approved surety bound with and for the Contractor to insure his acceptable performance of the Contract and for his payment of all obligations under the Contract.

V. The term "**Work**" includes all labor necessary to complete the construction required by the Contract Documents for this Contract, and all materials, equipment and supplies incorporated or to be incorporated in such construction.

W. **Written notice** will be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an office of the corporation for which it was intended, or if delivered at or sent by mail to the last business address shown to the party giving notice.

2. SPECIFICATIONS AND DRAWINGS

A. These Specifications are of an abbreviated form and contain incomplete sentences. Omissions of words or phrases such as "the Contractor shall," "shall be," "as noted on the Drawings," "according to the Drawings," "a," "an," "the" and "all" are intentional. Omitted words and phrases shall be supplied by inference in the same manner as when "note" occurs on the Drawings.

B. Owner, Contractor, Project Architect/Engineer, are those mentioned as such in the Contract Documents. They are treated throughout the Contract Documents as if each were of singular number and masculine gender.

C. Specifications are separated into titled divisions for convenience of reference, and to facilitate letting of contracts and subcontracts. Such separations will not, however, operate to make the Project Architect/Engineer an arbiter to establish limits of subcontracts or to establish jurisdiction.

D. The drawings, herein referred to consist of drawings prepared by the Project Architect/Engineer and are identified and incorporated in these Contract Documents.

E. Drawings are intended to show general arrangements, design, and extent of work and are partly diagrammatic. As such, they shall not be scaled.

F. Details take precedence over smaller scale general drawings.

G. In case of conflict between drawings and specifications, or between drawings and other drawings, the project architect is to be contacted for clarifications.

H. Any specific provision in any of the Contract Documents which may be in conflict or inconsistent with any of the articles in these General Conditions or the Supplementary General Conditions shall be controlling for that specific project.

I. Should conflicts in Contract Documents occur, either in quality or quantity of work required, the Contractor shall, unless clarification has been issued by addenda prior to receipt of bids, furnish, and

install work in accordance with either of the conflicting provisions of the documents as the Project Architect/Engineer may direct.

J. If the Contractor observes that drawings and specifications are at variance with any laws, ordinance, rules, regulations, or codes applying to the Work, he shall promptly notify the Architect Owner, and Division of Facilities Management in writing, and any necessary changes will be adjusted as provided in Contract Documents. However, it is not the responsibility of the Contractor to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes, and regulations.

K. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complimentary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results

L. Drawings consist of sheets enumerated in these Contract Documents and of such detailed drawings and instructions as will be provided during the progress of the Work, to fully explain and carry out the requirements of these specifications and the drawings.

M. Drawings, specifications, and copies thereof furnished by the Owner are and shall remain its property. They are not to be used on another project and, with the exception of one contract set for each party to the Contract, shall be returned to the Owner's Representative on request, at the completion of the Work.

3. ADDITIONAL INSTRUCTIONS

A. The Contractor may be furnished additional instructions, clarifications, and/or detail drawings by the Project Architect/Engineer as necessary to carry out the intent of the Work included in the Contract. The additional Drawings and/or instructions thus supplied will coordinate with the Contract Documents and will be so prepared that they can be reasonably interpreted as part thereof. The Contractor shall carry out the Work in accordance with the additional detail drawings and/or instructions.

4. REFERENCE STANDARDS

A. For products or workmanship specified by association, trade or Federal standards, comply with requirements of the standard, except when more rigid requirements are specified.

B. Obtain copy of standards when required by Contract Documents.

C. Should specified reference standards conflict with Contract Documents, request clarification from the Project Architect/Engineer before proceeding.

D. References to known Standard Specifications mean and intend the latest edition of said Specifications adopted and published as of the date of invitation to submit Bids. References to technical society, organization or body are made in the Specifications.

E. Codes, industry standards and guidelines referenced in the Contract Documents include but are not limited to the following acronyms:

ADAAG	Americans with Disabilities Act Accessibility Guidelines
ACI	American Concrete Institute
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
ANSI	American National Standards Institute (all publications)
ARI	American Refrigeration Institute
ASHRAE	American Society of Heating, Refrigeration & Air-Conditioning Engineers, Inc.
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing Materials
AWI	Architectural Woodwork Industry
AWSC	American Welding Society Code

CBM	Certified Ballast Manufacture
FM/IRI	Factory Mutual/Insurance Rating Institute
GCEHMF	Guidelines for Construction and Equipment of Hospital and Medical Facilities
IBC	International Building Code
ICEA	Insulated Cable Engineers Association
IEEE	Institute of Electrical and Electronics Engineers
IFC	International Fire Code
IFGC	International Fuel Gas Code
IMC	International Mechanical Code
IPC	International Plumbing Code
JCAHO	Joint Commission on Accreditation of Healthcare Organizations
	Kansas Boiler Safety Act Rules and Regulations
LSC	Life Safety Code
MRCA	Midwest Roofing Contractors Association
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NESC	National Electrical Safety Code
NFPA	National Fire Protection Association
NIST	National Institute of Standards & Technology
NRCA	National Roofing Contractors Association
OSHA	Occupational Safety and Health Act
SIGMA	Sealed Insulating Glass Manufacturers Association
SMACNA	Sheet Metal Air Conditioning National Association
UL	Underwriters Laboratories, Inc.

5. SURVEYS, PERMITS AND REGULATIONS

A. If additional site information is required beyond that shown in the Contract Documents, the Contractor shall be responsible for all site, topography and property surveys not provided.

B. The Contractor shall pay all fees and shall procure all applications, permits, licenses and approvals necessary for the execution of his Contract. See K.S.A. 75-3741c.

C. The Contractor shall give all notices and comply with all State and Federal laws, codes, rules and regulations relating to the performance of the Work, the protection of adjacent property, and the maintenance of passageways, guard fences or other protective facilities.

D. If charges for water, sewer and other utility connections made by municipalities are costs which the State is obligated to pay, the Contractor shall pay these charges where required by the Specifications.

6. SHOP DRAWINGS AND SAMPLES

A. Shop drawings shall consist of drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared by the Contractor or any Subcontractor, manufacturer, supplier or distributor, and which illustrate some portion of the work.

1. All shop drawing submittals shall be accompanied by a transmittal letter identifying the project and listing each item being submitted. Each item submitted shall be identified by reference to the Project identification number, Specifications number and/or Drawing sheet numbers.

2. Contractor shall submit to the Project Architect/Engineer a list of shop drawings and a tentative submittal schedule prior to the first partial payment. Submittal schedule must be updated if requested.

3. All subcontractors, material or equipment suppliers shall submit through the Contractor–shop drawing items comprising brochures, manufacturer's catalog sheets and data specifications. After the Project Architect/Engineer's approval, one (1) copy shall remain on file with the Project Architect/Engineer, one (1) copy shall be transmitted to the Division of Facilities Management, one (1) copy shall be sent to the Owner, one (1) copy shall be kept on file in the Contractor's job.

In addition to the distribution listed above, the contractor shall determine the number of additional copies required for construction use, including subcontractors and suppliers. Additional copies that may be required for the project shall be identified at the pre-construction conference. Contractor shall distribute the construction copies as required.

B. Samples shall consist of physical examples furnished by the Contractor in sufficient size and quantity to illustrate materials, equipment or workmanship, and to establish standards by which the work will be judged. Samples shall be submitted on items called for in the Specifications or as requested by the Project Architect/Engineer.

1. Submit samples in sufficient quantity to permit Project Architect/Engineer to make all necessary tests and of adequate size to show quality, type, color range, finish, and texture. Label each sample stating materials, type, color, thickness, size, project name, identification number, and Contractor's name.

2. Submit transmittal letter requesting approval, and prepay transportation charges to Architect/ Engineer's office on samples forwarded.

3. Materials installed shall match approved samples.

C. The Contractor shall review shop drawings and samples and shall place his stamp and/or signature thereon as evidence that he has checked each item, and shall submit same with reasonable promptness and in orderly sequence so as to cause no delay in the Work or in the work of any other Contractor. The Contractor shall inform the Project Architect/Engineer in writing of any deviation in the shop drawings or samples from the requirements of the Contract Documents. Contractor shall be responsible for all corresponding changes due to deviations in details, dimensions, and costs involved with other trades.

D. By stamping and submitting shop drawings and samples, the Contractor thereby represents that he has determined and verified all field measurements, field construction criteria, materials, catalog numbers, and similar data, and that he has checked and coordinated each shop drawing and sample with the requirements of the work and of the Contract Documents. Drawings not so noted will be returned without being examined by the Project Architect/Engineer.

E. The Project Architect/Engineer will review and approve shop drawings and samples with reasonable promptness so as to cause no delay, but only for conformance with the design concept of the project and compliance with the information given in the Contract Documents. The Project Architect/Engineer's approval of a separate item shall not indicate approval of an assembly in which the item functions, nor shall the Project Architect/Engineer's approval relieve the Contractor from responsibility for errors or omissions in shop drawings or samples.

F. The Contractor shall make any corrections required by the Project Architect/Engineer and shall resubmit the required number of corrected copies of shop drawings or new samples until approved. Resubmitted items shall be identified as such on the items and the transmittal letter.

G. The Contractor shall direct specific attention in writing on resubmitted shop drawings to revisions other than the corrections requested by the Project Architect/Engineer on previous submissions. Corrections or changes indicated on shop drawings shall not be considered an extra work order.

H. No work requiring a shop drawing or sample submission shall be commenced until the submission has been approved by the Project Architect/Engineer. All such work shall be in accordance with approved shop drawings and samples.

I. The Contractor shall keep on the site of the Work, an approved or confirmed copy of the shop drawings, Drawings and Specifications, and shall at all times give the Owner access thereto.

J. All drawings for any one Contract should be numbered consecutively and shall bear the name, project identification number, and location of the project, the name of the Contractor, the date of the drawing, and the date of each correction or revision.

K. The Contractor submitting late, inadequate or incorrect shop drawings shall be responsible for

damages and delays should submittals be rejected by the Project Architect/Engineer.

7. MATERIALS AND WORKMANSHIP

A. Materials and fixtures shall be new and of latest design and current manufacture unless otherwise specified as approved by the Project Architect/Engineer. All Work shall be performed by competent workers and shall be of best quality.

B. The Contractor shall carefully examine the plans and specifications and shall be responsible for the proper fitting of his material, equipment, and apparatus into the building.

C. The Contractor shall base his bid only on the Contract Documents. Contractor may make a written proposal to the Project Architect/Engineer to use alternate materials or fixtures, but the Project Architect/Engineer's decision shall be final. Refer to Article 10 - "Or Approved Substitute" Clause.

D. Should the Contract Documents fail to adequately describe materials or goods to be used, it shall be the duty of the Contractor to inquire of the Project Architect/Engineer what is to be used and to supply it at the Contractor's expense or else thereafter replace it to the Project Architect/Engineer's satisfaction. As a minimum, the Contractor shall provide the quality of materials as generally specified throughout the Contract Documents.

E. Materials and workmanship shall be subject to inspection, examination, and test by the Project Architect/Engineer, the Construction Representative and the Owner's Representative at any and all times during manufacture, installation, and construction on any of them, at places where such manufacture, installation, or construction is carried on. The Project Architect/Engineer shall have the authority and right to reject defective materials and workmanship or to require correction.

F. Materials prohibited by governmental authority or regulation from being used in construction shall not be used on this project.

G. The Contractor shall promptly remove, at his expense, all rejected materials from work site.

H. When a material has been approved, no change in brand or make will be permitted unless:

1. Manufacturer cannot make satisfactory delivery, or

2. Material delivered fails to comply with contract requirements.

3. No change can be made without the Project Architect/Engineer's approval

I. In order that ready availability of materials, parts, or components for repair, replacement, or expansion may be assured, all such materials, parts and components shall be obtained where feasible from sources which maintain a regular, domestic stock.

J. Reference to "standard" specifications of any association or manufacturer, or codes of State authorities, refers to the most recent printed edition or catalog in effect on the date which corresponds with date of the Contract Documents.

K. Whenever reference is made in the Specifications that work shall be "performed," "applied," "installed," "finished," "tested," or "connected," in accordance with the "manufacturer's directions or instruction," the Contractor to whom those instructions are directed shall furnish printed copies of such instructions when requested by the Project Architect/Engineer before execution of the work.

8. ALLOWANCES

A. The Contractor shall include in the contract sum all allowances stated in the Contract Documents. Items covered by these allowances shall be supplied for such amounts and by such persons as the Owner may direct, but the Contractor will not be required to employ persons against whom he makes a reasonable objection.

B. Unless otherwise provided in the Contract Documents:

1. These allowances shall cover the cost to the Contractor, less any applicable trade discount, of the materials and equipment required by the allowance delivered at the site, and all applicable taxes;

2. The Contractor's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the original allowance shall be included in the contract sum and not in the allowance;

3. Whenever the cost is more than or less than the allowance, the contract sum shall be adjusted accordingly by Change Order, the amount of which will recognize changes, if any, in handling costs on the site, labor, installation costs, overhead, profit and other expenses.

9. INSPECTION AND TESTING OF MATERIALS

A. All work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records shall be made available by the Contractor to authorized representatives and agents of State government.

B. If a portion of the Work is covered contrary to the Project Architect/Engineer's request or to requirements specifically expressed in the Contract Documents, it shall, if required in writing by the Project Architect/Engineer or the Owner's Representative, be uncovered for the Architect's observation and be replaced and recovered at the Contractor's expense with the proper personnel in a timely manner as approved by the Owner, without change in the Contract Time.

C. If a portion of the Work has been covered which the Architect or the Owner's Representative has not specifically requested to observe, prior to its being covered, the Project Architect/Engineer or the Owner's Representative may request to see such Work, and it shall be uncovered by the Contractor who will furnish the necessary facilities, labor and materials. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate contractor in which event the Owner will be responsible for payment of such costs.

D. Unless otherwise provided, Contractor shall provide all testing as outlined in the Contract Documents by approved independent testing agencies. Copies of tests reports shall be sent to Division of Facilities Management, the Owner, and the Project Architect/Engineer and the Contractor by the testing agency.

E. If any work is required to be specially tested or approved, the Contractor shall give the Project Architect/Engineer, Construction Representative and the Owner's Representative a minimum of five working days notice of date for such inspection. Such materials and equipment requiring testing, shall be tested in accordance with accepted or specified standards, as applicable. Unless otherwise called for in the Specifications, the laboratory or inspection agency shall be accepted by the Project Architect/Engineer and the Contractor will pay all costs incurred by the specified testing and laboratory procedures. Should retesting be required, due to failure of initial testing, the cost of such retesting shall be borne by the Contractor.

F. The cost of any testing performed by manufacturers or contractors for the purpose of substantiating acceptability of proposed substitution of materials and equipment, or the necessary conformance testing in conjunction with manufacturing processes or factory assemblage, shall be borne by the Contractor or manufacturer responsible.

G. On the basis of the test results, materials, equipment, or accessories may be rejected even though general approval has been given. If items have been incorporated in the Work, the Project Architect/Engineer will have the right to cause their removal and replacement, without cost to the Owner, by items meeting contract requirements or to demand and secure such reparation to the Owner from the Contractor as is equitable.

H. The Project Architect/Engineer reserves the right to require the Contractor to furnish a certificate guaranteeing that material or equipment as submitted complies with contract requirements. If statement originates with manufacturer, the Contractor shall endorse all claims and submit statement

in his own name.

10. "OR APPROVED SUBSTITUTE" CLAUSE

A. Whenever in the Contract Documents any article, appliance, device, or material is designated by the name of a manufacturer, vendor, or by any proprietary or trade name, the words "or approved substitute", shall automatically follow and shall be implied unless specifically indicated otherwise. The standard products of manufacturers other than those specified will be accepted when, it is proven in writing via product literature to the satisfaction of the Project Architect/Engineer they are equal in design, spare parts availability, strength, durability, usefulness, serviceability, operation cost, maintenance cost, and convenience for the purpose intended. The written product literature shall include information to allow a complete comparison of the proposed product. Any changes required in the details and dimensions indicated in the Contract Documents for the substitution of standard products other than those called for shall be properly made and approved by the Project Architect/Engineer at the expense of the Contractor requesting the substitution or change. No substitutions will be permitted for components of extensions to existing systems when, in the opinion of the Project Architect/Engineer, the named manufacturer must be provided in order to insure compatibility with the existing systems, including, but not limited to, fire alarms, smoke detectors, controls, etc.

B. No substitution shall be purchased or installed by the Contractor without the Project Architect/Engineer's written approval. Requests for approval of substitutions must be made in a timely manner. (See applicable section of the "Instructions to Bidders").

C. It shall be understood that the use of materials or equipment other than those specified, or approved substitute by the Project Architect/Engineer, shall constitute a violation of Contract, and that the Project Architect/Engineer shall have the right to require the removal of such materials or equipment and their replacement with the specified materials or equipment at the Contractor's expense.

11. SUBSURFACE AND LATENT CONDITIONS FOUND DIFFERENT

A. Should the Contractor encounter subsurface or latent conditions at the site materially differing from those indicated in the Contract Documents, he shall immediately stop work in the area where differing conditions are found and give notice to the Project Architect/Engineer, Owner, and Division of Facilities Management, of such conditions before they are further disturbed. The Project Architect/Engineer will thereupon promptly investigate the conditions, and if he finds that they materially differ from those indicated in the Contract Documents, he will at once make such changes as he may find necessary, any increase or decrease of cost resulting from such changes to be adjusted in the manner provided in Article 12 - Changes in Work, of the General Conditions.

12. CHANGES IN WORK

A. No changes in the work covered by the Contract Documents shall be made without having such change executed in writing by Contract Change Order and approved by the Project Architect/Engineer, Owner, Director of Facilities Management and the Director of Accounts and Reports. Any change in the work performed by the Contractor without signed approval shall be done at the Contractor's expense.

B. In cases of emergency, or as needed to expedite the work in a timely manner, the Project Architect/Engineer may authorize, in writing, changes in, or additions to, Work to be performed or material to be furnished pursuant to the provisions of the Contract. These field orders shall be incorporated into formal Contract Change Orders at a later date.

C. Changes in the work covered by Contract Change Order include, but are not limited to: extension or reduction in project completion time, charges or credits resulting from changes in construction. A Change Order is the sole remedy for the contractor. No request may reserve the right to additional compensation or remedies related to work in the request regardless of any language to the contrary. Charges or credits to the contract sum for work covered by the approved change order shall be determined by one or more, or a combination of the following methods:

1. By an acceptable unit price or lump sum proposal from the Contractor and the Subcontractors of

any tier. Proposal shall include all take-off sheets of each Contractor and Subcontractor of any tier. Breakdowns shall include a listing of each item of material with unit prices and number of hours of labor for each task. Labor cost per hour shall identify the base labor rate and applicable fringe benefits plus associated expenses for social security, worker's compensation, and federal and state unemployment.

2. By a cost-plus-fixed-fee (percentage) basis with maximum price, total cost not to exceed maximum specified.

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

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

1. The overhead and profit charged by the Contractor shall be considered to include, but not limited to, performance bond, builder's risk and public liability insurance, job site office expense, incidental job supervision, field supervision, company benefits, general office overhead, and cost associated with the preparation of design documents, layout drawings, or shop drawings. The percentages for overhead and profit charged on Change Orders shall be negotiated and may vary according to the nature, extent, and complexity of the Work involved but in no case shall exceed the following:

OVERHEAD AND PROFIT FOR ADD CHANGE ORDERS

	Overhead	Profit	Fee
To Contractor on work performed by other than his own forces:	0%	0%	10%
To First level subcontractor on work performed by his subcontractors:	0%	0%	10%
To Contractor and/or his sub contractors for that portion of work performed with their respective forces:	10%	10%	0%

2. On proposals covering both increases and decreases in the amount of the Contract, the application of overhead and profit shall be on the net change indirect cost for the Contractor or Subcontractor of any tier performing the Work.

3. The percentages for overhead and profit credit to the Owner on Change Orders that are strictly decreases in the Quantity of work or material shall be negotiated and may vary according to the nature, extent, and complexity of the Work involved.

E. No claim for an addition to the Contract sum will be valid unless authorized as aforesaid in writing by the Project Architect/Engineer. In the event that none of the foregoing methods are agreed upon, the Project Architect/Engineer may require the contractor to complete the work by force account. The cost of such Work will be determined by the Contractor's actual labor and material cost to perform the work plus applicable overhead and profit as outlined above recorded on a daily basis. The Owner's Representative and the Project Architect/Engineer will verify daily the Contractor's time and material for the Work.

F. Any work completed by the Contractor outside the original project scope without written approval from the Project Architect/Engineer will be deemed as a waiver by the Contractor for additional compensation for said work.

G. The Owner will either accept or reject a change order within (14) calendar days after receipt of complete change order pricing and documentation from the Contractor as outlined in this Article.

13. SEPARATE CONTRACTS

A. When separate Contracts are awarded for different portions of the Project or other work at the site, the term Contractor in the Contract Documents in each case shall mean the contractor who executes each separate Contract with the Owner. The term Prime Contractor shall mean that specific contractor established by the Contract to serve as coordinator and director of all work, and all contractors placed under the contractual authority of the prime contractor shall provide work for the project in accordance with the direction of the prime contractor. Failure to abide by this provision shall constitute a breach of Contract.

B. The Owner reserves the right to perform work related to the project with his own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar conditions of the Contract. All contractors shall fully cooperate with each other and carefully fit the work to that provided under other contracts as may be directed by the Owner. It shall be the duty of each Contractor to whom Work may be awarded, as well as all Subcontractors of any tier employed by them, to communicate immediately with each other in order to schedule Work, locate storage facilities, etc., in a manner that will permit all Contractors to work in harmony in order that Work may be completed in the manner and within the time specified in the Contract Documents.

C. No Contractor shall delay another Contractor by neglecting to perform his work in the proper sequence. Each Contractor shall be required to coordinate his work with other Contractors so as to afford others reasonable opportunity for execution of their work. Any costs caused by defective or ill-timed work, including actual damages, if applicable, shall be borne by the Contractor responsible therefore.

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

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

14. SUBCONTRACTS

A. The Contractor may utilize the services of specialty subcontractors on those parts of the Work, under normal contracting practices, as performed by such subcontractors.

B. Unless otherwise required by these Contract Documents or the Bidding Documents, the Contractor, within ten (10) days after the award of the Contract, shall furnish to the Project Architect/Engineer and the Director of Facilities Management in writing the names of the persons or entities proposed for each of the principal subcontracted portions of the work. The Contractor shall not award any work to any subcontractor found unqualified by the Project Architect/Engineer, Division of Facilities Management, or the Owner.

C. The Contractor shall be as fully responsible to the Owner for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

D. Nothing contained in Contract Documents shall create any contractual relation between any subcontractor and the Owner.

E. The Contractor, by written agreement, shall require each subcontractor, to the extent of the work to be performed by the subcontractor, to be bound to the Contractor by the terms of these Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these documents, assumes toward the Owner and the Project Architect/Engineer. Said agreement shall preserve and protect the rights of the Owner under the Contract Documents. Where

appropriate, the Contractor shall require each subcontractor to enter into similar agreements with his sub-subcontractors.

15. MUTUAL RESPONSIBILITY OF CONTRACTORS

A. If, through acts of neglect on the part of the Contractor, any other contractor or any subcontractor shall suffer loss or damage on the work, the Contractor agrees to promptly settle with such other contractor or subcontractor by agreement or otherwise to resolve the dispute. If such other contractor or subcontractor shall assert any claim against the Owner on account of any damage alleged to have been sustained, the Owner shall notify the Contractor, who shall indemnify and hold harmless the Owner against any such claim.

16. PROJECT ARCHITECT/ENGINEER'S AUTHORITY

A. The Project Architect/Engineer is retained by and is responsible to the Secretary of Administration and the Division of Facilities Management.

B. The Project Architect/Engineer shall determine the amount, quality, acceptability and fitness of the several kinds of work and materials which are provided under this Contract and shall decide all questions which may arise in relation to said Work and the construction thereof. In case any question shall arise between the parties hereto relative to said Contract or Specifications, the determination or decision of the Project Architect/Engineer shall be a condition precedent to the right of the Contractor to receive any money or payment for work under this Contract affected in any manner or to any extent by such question.

C. The Project Architect/Engineer shall decide the meaning and intent of any portion of the Contract Documents where the same may be found obscure or be in dispute. Any differences or conflicts in regard to their work which may arise between the Contractor under this Contract and other contractors performing work on this Project for the Owner shall be adjusted and determined by the Project Architect/Engineer.

D. The Project Architect/Engineer shall provide responsible Construction Administration. After consultation with the Owner and Division of Facilities Management he has authority to stop the Work whenever such stoppage may be necessary to insure proper execution of the Contract.

E. The Project Architect/Engineer is the interpreter of the conditions of the Contract and the judge of its performance; as such, he shall side neither with the Owner nor with the Contractor, but shall use his powers under the Contract to enforce its faithful performance by both.

F. He shall, within a reasonable time, act on submittals and make decisions on all matters relating to the progress of the Work or the interpretation of the Contract Documents.

G. The Project Architect/Engineer's decisions are subject to review by the Director of the Division of Facilities Management.

1. All claims must be brought to the attention of the Director within ten (10) days of the Project Architect/Engineer’s decision which is being reviewed. The Director or his designee shall meet with the Contractor and Project Architect/Engineer to hear the positions of both parties. The director may designate alternative procedures to receive and review the positions of the parties. If a negotiation committee was assembled to select the Project Architect/Engineer, the director may delegate the decision making power to those individuals. The director, his designee or the negotiating committee shall render a decision within thirty (30) days of the hearing.

17. DUTIES OF THE CONTRACTOR

A. The Contractor shall provide and pay for all materials, labor, tools, equipment, transportation, and superintendence, and coordination of subcontractors necessary to execute, complete, and deliver the work within the specified time. Whenever the Contract Documents indicate work to be performed by the Contractor, it shall mean at the Contractor’s expense.

B. Properly prepare all Work to receive subsequent Work or finish. Notify the Project Architect/Engineer if

any Work is unsatisfactory to receive such subsequent Work or finish and receive his instructions before proceeding.

C. The Contractor shall supply sufficient and competent supervision and personnel, and sufficient material, plant, and equipment to prosecute the Work with diligence to insure completion thereof within the time specified in the Contract Documents, and shall pay when due any laborer, Subcontractor of any tier, or supplier.

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

E. The Project Architect/Engineer, Division of Facilities Management, and the Owner's Representative shall, at all times, have access to the Work; and Contractors shall provide proper facilities for such access.

F. The Contractor and each of his Subcontractors of any tier shall submit to the Owner such schedules of quantities and costs, progress schedules, payrolls, reports, estimates, records, and other data as the Owner may request concerning work performed or to be performed under the Contract.

G. The Contractor shall be represented at the site by a competent superintendent or foreman from the beginning of the Work until its final acceptance, unless otherwise permitted by the Owner's Representative. The superintendent or foreman for the Contractor for the general building Work shall exercise general supervision over all Subcontractors of any tier engaged on the Work with decision making authority of the Contractor. It is understood that such representative shall be acceptable to the Project Architect/Engineer, Owner, and the Division of Facilities Management, and shall not be replaced without written permission before the project is completed unless he ceases to be on the Contractor's payroll. The superintendent shall be replaced upon request of the Owner.

H. The Contractor shall attend preconstruction conference with all of his appropriate subcontractors.

I. The Contractor shall attend all project meetings with all of his appropriate subcontractors.

J. The superintendent or foreman shall establish and maintain a permanent benchmark to which access may be had during the progress of the Work, shall give all lines and levels, and shall be responsible for the correctness of such. The contractor shall retain the services of a registered land surveyor for the project construction staking and layout if referenced in the Supplemental General Conditions.

K. No pleas as to act, orders or supervision of the Architect, the Owner, or any other person shall be admitted in justification of any errors in construction or departure from terms of the Contract, except for duly executed change orders, additional instructions or additional supplemental contracts, in writing, signed by the Owner.

L. The Contractor shall be responsible for layout of his own work and for any damage which may occur to work of any other Contractor or subcontractors of any tier, because of errors or inaccuracies on the part of this Contractor and his Subcontractor of any tier as well as be responsible for unloading, uncrating, and handling of all materials and equipment to be erected or placed by him, whether furnished by the Contractor or others. The Contractor is further responsible that the layout of work by Subcontractors of any tier which shall be coordinated with layouts of all general construction Work and all other subcontract work. Unless otherwise directed by the Owner's Representative, salvage materials, waste, and scrap resulting from such work shall be promptly removed from the site by the Contractor, at his expense.

M. The Contractor shall limit operations and storage of materials to the area within the project limit lines shown on drawings, except as necessary to connect to existing utilities, shall not encroach on neighboring property, and shall exercise caution to prevent damage to existing structures.

N. The contractor shall follow procedures outlined below for all utility outages/tie-ins:

1. All shutting of valves, switches, etc shall be in conjunction with or by the Owner's personnel.

2. The Contractor shall request an outage/tie-in meeting at least two weeks before the outage/tie-in is required.

3. The Owner's Representative will schedule an outage/tie-in meeting at least one week prior to the outage/tie-in.

4. The following individuals shall attend this meeting:

   (a) Owner's Representative

   (b) Contractor's Superintendent

   (c) Subcontractor's of any tier performing the Work

5. The Contractor shall be prepared to discuss the following at this meeting:

   (a) Date and time of proposed outage/tie-in.

   (b) Detailed work plan to be followed during the outage and the total time required to complete all work.

   (c) Work force to be employed during the outage.

   (d) Owner and/or utility responsibilities during the outage.

   (e) Contingency plan in case of complications (i.e., the availability of additional personnel and materials) during the outage.

6. The Contractor shall be aware that the outage/tie-in time and date is subject to approval by the Owner's Representative.

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

P. The Contractor shall promptly remedy damage and loss to property referred to in this Article caused in whole or in part by the Contractor, a Subcontractor of any tier, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable, and for which the Contractor is responsible under this Article.

Q. The Contractor shall be responsible for protection, including weather protection, and proper maintenance of all equipment and materials installed, or to be installed by him.

R. The Contractor shall be responsible for care of his finished Work and must protect same from damage or defacement until acceptance by Owner. All damaged or defaced work shall be repaired or replace to the Owner's satisfaction, without cost to the Owner.

S. The Contractor shall comply with all applicable ordinances and regulations. The Contractor shall save the Owner and the Project Architect/Engineer harmless as a result of any failure to do so.

T. Required Code inspections necessary for Occupancy

It is the responsibility of the Contractor to coordinate with the DFM inspectors to schedule required code inspections. The agency and the project architect/engineer are to be informed of all scheduled required code inspections.

Code inspections (if component is included in the project) are required to be performed by DFM prior to covering work. These inspections include but are not limited to:

1. Footings and Foundations
2. Underfloor/Underslab
3. MEP Underground (not associated with underfloor/underslab)
4. Framing
5. In-Wall
6. Fire-resistive assemblies and fire-resistant penetrations
7. Above Ceiling
8. Fire Alarm
9. Sprinkler and Standpipe
10. Emergency Lighting
11. Back-up Power Sources
12. Fire Pump
13. Elevator
14. Roof inspections (including tear-off, insulation, membrane placement, flashing)
15. Emergency Power
16. Smoke Control Systems
17. Pressure testing of all piping
18. Locking systems
19. Final Inspections (including exit path and ADAAG verification)

(This information is also outlined on the Occupancy Checklist form located on our website at www.da.ks.gov/fp/.)

The required code inspections shall be coordinated with DFM inspector via individual cell telephones. Telephone contact is to be a minimum of 3 work days prior to anticipated inspection. Inspection confirmation may occur via e-mail after telephone coordination. Failure to coordinate a scheduled inspection with a minimum of 3 work days may result in no inspection and subsequent denial of a Certificate of Occupancy.

An **Inspection Record** will be issued by DFM inspectors for each required inspection. The Inspection Record will indicate when the inspection is approved. If a deficiency is noted, it will be the responsibility of the contractor to coordinate solution of the deficiency with the Project Architect/Engineer and to correct all noted deficiencies as directed by the Project Architect/Engineer. Issuance of the Certificate of (Partial) Occupancy is dependant on resolution of all deficiencies.

(Please note: The inspector, noted in Item 1 above, is to be notified of each required inspection. The inspector, at his discretion, may defer this inspection. The inspector will inform the contractor and agency representative regarding who will be performing the inspection.)

U. When requested by the Project Architect/Engineer, Construction Representative, and the Owner's Representative, the Contractor, at no extra charge, shall provide a safe means for examination of work in progress or completed.

V. No project signs shall be erected without the approval of the Owner's Representative.

W. The Contractor shall verify all measurements. No extra charges or compensation will be allowed as a result of the failure to verify dimensions before ordering materials or fabricating items.

X. The Contractor shall provide, at the proper time, such material as required for support of the Work. If openings or chases are required, whether shown on drawings or not, the Contractor shall see they are properly constructed. If required openings or chases are omitted by the Contractor, the Contractor shall provide them at the Contractors own expense, but only as directed by the Project Architect/Engineer.

Y. The Contractor shall maintain at his own cost and expense, adequate, safe and sufficient walkways, platforms, scaffolds, ladders, hoists, and all necessary, proper, and adequate equipment, apparatus, and appliances useful in carrying on the Work and to make the place of work safe and free from

avoidable danger, and as may be required by safety provisions of applicable laws, ordinances, rules, regulations, and building and construction codes.

Z. The Contractor shall be responsible for removal of all rubbish, debris, and dirt resulting from the Work and shall clean up as requested by the Project Architect/Engineer, Construction Representative, and the Owner's Representative. The Contractor shall be responsible for the cost of clean up and removal from premises. All debris resulting from said removal shall be disposed of off State owned property at an authorized dump site. The building and premises shall be kept clean, safe, in a workmanlike manner, and in compliance with OSHA standards at all times. At completion of Work, all dirt, stains, and smudges shall be removed from every part of the building, all glass in doors and windows shall be washed, and entire Work shall be left broom clean in a finished state ready for occupancy. The Contractor shall advise his Subcontractors of any tier of this provision, and the Contractor shall be fully responsible for leaving the premises in a finished state ready for use to the satisfaction of the Owner's Representative. In detention facility projects, the contractor shall return all security related shop drawings to the Owner.

AA. The Contractor shall accurately record on blue line prints all changes to the original plans made during the installation of the work. The Contractor shall also record all changes to the original specifications made during the installation of the work. The Contractor shall maintain an updated set of Record Documents (both drawings and specifications) at the job site throughout construction (if there is an on-site office). This set of Record Documents shall include all addenda, change orders, field revisions, changes, and alterations that occur during construction and shall be furnished, in good condition, to the Project Architect/Engineer prior to completion of the project.

BB. The Contractor shall establish and be responsible for wall and partition locations. Other Contractors and Subcontractors of any tier shall observe these locations and be responsible for setting their sleeves, openings, or chases.

CC. The Contractor for construction work shall pump, bail, or otherwise keep general excavations free of water. Subcontractors of any tier shall keep their individual excavations free of water in an approved manner. The Contractor shall keep all areas free of water before, during, and after concrete placement.

DD. The Contractor shall be responsible for cutting, fitting or patching required to complete the work or to make its parts fit together properly.

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

FF. The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the Contract Documents, and shall complete the entire Work to the extent of quality and workmanship implied by the Contract Documents and in a manner which will warrant acceptance by the Project Architect/Engineer, the Owner, and the Division of Facilities Management.

GG. Contractors and Subcontractors employed upon Work shall be required to conform to labor and employment laws of the State of Kansas and various acts amendatory and supplementary thereto and to other laws, ordinances and legal requirements applicable thereto.

HH. The Contractor shall be responsible for the conduct of Contractor's employees and the employees of subcontractors and suppliers on the work site. The Contractor shall take immediate steps to remedy any activity which may be construed as discriminatory or which creates a hostile work environment. Activities covered by this provision include, but shall not be limited to, signs or language that are vulgar, profane or racially or sexually derogatory.

II. The contractor shall inspect the building and complete deficiencies before the Project Architect/Engineer's final inspection in order to avoid long and multiple punch lists. The building shall

be cleaned before the final inspection to allow all defects to be noticed at the final inspection and reduce late additions to the punch list.

18. PROTECTION OF WORK AND PROPERTY

A. In the event of temporary suspension of work, or during inclement weather, or whenever the Project Architect/Engineer shall direct, the Contractor shall, and shall cause his subcontractors to carefully protect his and their work and materials against damage from the weather. If, in the opinion of the Project Architect/Engineer, any work or materials that have been damaged by reason of failure on the part of the Contractor or any of his subcontractors to protect the work, such materials shall be removed and replaced at the expense of the Contractor.

B. The Contractor shall at all times safely guard the Owner's property from damage or loss in connection with his Contract. He shall at all times safely guard and protect his own work, and that of adjacent property, from damage. The Contractor shall replace or make good any such damage or loss unless such be caused directly by errors contained in the Contract Documents, or by the Owner, or his duly authorized representative.

C. In case of an emergency which threatens loss or damage of property, or safety of life, the Contractor will be allowed to act, without previous instructions from the Project Architect/Engineer, in a diligent manner. He shall notify the Project Architect/Engineer promptly thereafter. Any claim for compensation by the Contractor due to such extra work shall be promptly submitted to the Project Architect/Engineer for approval as provided for in Article 12 - Changes in Work, herein.

D. The Contractor shall be responsible for and shall pay for all damage to building, walks, pavement, steps, plantings, lawns and any other property which is caused by construction activity. Any such damage shall be corrected by repair or replacement as directed by the Project Architect/Engineer and in a manner acceptable to the Owner.

E. Transport, handle, store and erect materials in a manner to keep them free from damage.

F. Support no runways, ramps or construction equipment on or transport over any items or assemblies subject to displacement, disfigurement or other damage.

G. Protect Work in place which requires job-finishing until said finishing has been completed.

H. Protect previously placed Work with suitable coverings or other protections during installation of subsequent Work. Remove any foreign materials from surfaces, and then clean same immediately with materials that will not damage finished Work (brick, aluminum, etc.) to the satisfaction of the Project Architect/Engineer.

19. RECEIVING AND STORING MATERIALS AND EQUIPMENT

A. Upon receipt of materials and equipment at the job site or another authorized point of delivery, Contractor shall have an authorized person present to check all items for in-transit damage and to make arrangements to replace any damaged materials or equipment in ample time to prevent delay to its scheduled installation.

B. At the point of receipt of materials and equipment, the Contractor shall have sufficient experienced personnel present to unload all items and prepare and locate them for proper storage prior to their installation.

C. Wherever possible, deliver materials and equipment in manufacturers' original crates, boxes or packages, keeping identifying labels intact until installation and final acceptance and cleaning. Where items are to be job-assembled, label, tag, mark or otherwise properly identify each component part until incorporated in the Work.

D. Provide waterproof, well-ventilated enclosures for storage of materials and equipment subject to damage by dampness, frost, freezing, etc. Location for said enclosures shall be where approved by the Owner.

E. Storage of materials and equipment outside on pallets with any type of covering material over them will not be allowed, unless permission to do so has been documented in writing by the Architect or Engineer.

F. Remove from the premises and replace with new, any materials and equipment determined, in writing, by the Project Architect/Engineer to be in any condition not acceptable for use on the Project.

20. SAFETY

A. The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner's Representative and Architect.

B. Precaution shall be exercised at all times for the protection of persons (including employees) and property. The safety provisions of applicable laws and building and construction codes shall be observed. Machinery, equipment and hazardous conditions shall be guarded, including warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities or eliminated in accordance with the safety provisions of the Manual of Accident Prevention in Construction, published by the Associated General Contractors of America; and Occupational Safety and Health Standards, published by Occupational Safety and Health Administration, U.S. Department of Labor; or their successor publications., latest and best edition, amendments or addenda.

C. All contractors/suppliers hereby agree to comply with all applicable occupational safety, health and environmental laws, regulations, standards, codes and/or ordinances at all times from inception through completion of this Contract. This includes, but is not limited to, the Hazard Communication Standard under the Occupational Safety and Health Act (for information and free assistance, contact the Kansas Department of Human Resources, Division of Industrial Safety and Health, 512 S.W. 6th Street, Topeka, Kansas 66603-3150, telephone 913-296-4386); and the Emergency Planning and Community Right-to-Know Act (for information and free assistance, contact the Kansas Department of Health and Environment Right-to-Know Program, 109 S.W. 9th Street, Suite 501, Topeka, Kansas 66612-1290, telephone (785-296-1690).

D. The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of authorities having jurisdiction bearing on safety of persons or property or their protection from damage, injury, or loss.

E. When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

F. The Contractor shall be responsible for the safety of all persons while on the construction site. The Contractor shall maintain construction area safety which may include providing and maintaining warning signs, lights, signal devices, barricades, guard rails, fences, and other devices appropriately located on site which shall give proper and understandable warning to all persons of danger, entry onto land, structure, or equipment as required by code and all other regulatory requirements.

G. If the Contractor encounters on the site, material believed to be hazardous which has not been rendered harmless, the Contractor shall immediately stop Work in the area effected and report the condition to the Architect and the Owner's Representative in writing. The Work in the effected area shall not thereafter be resumed except by written agreement of the Architect and Contractor if in fact the material is hazardous and has not been rendered harmless. Hazardous materials are those as defined by Kansas Department of Health and Environment's response list.

H. The Contractor shall promptly take precautions which are necessary and adequate against conditions created during the progress of the Contractor's activities hereunder which involve a risk of bodily harm to persons or a risk of damage to property. The Contractor shall continuously inspect Work, materials, and equipment to discover any such hazardous conditions and shall be solely responsible for correction of any such conditions.

I. It shall be the sole responsibility of the Contractor to enforce or direct safety rules or procedures. It

shall not be the responsibility of the Owner or Project Architect/Engineer to enforce or direct safety rules or procedure.

J. Contractor shall hold harmless and indemnify the Owner and Project Architect/Engineer from damages and expenses from any and all claims related to this Article for bodily injury or property damage or expenses incurred by any person or firm.

K. The Contractor shall properly execute the work before proceeding to the next stem in sequence so as not to endanger the safety of all persons while on the construction site.

21. CORRECTION OF THE WORK

A. The Contractor shall promptly correct Work rejected by the Project Architect/Engineer for failing to conform to the requirements of the Contract Documents, whether observed before or after final completion. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Project Architect/Engineer's services and expenses made necessary thereby.

B. The Contractor shall remove from the site, at his expense portions of the Work which are not in accordance with the requirements of the Contract Documents and not accepted by the Project Architect/Engineer.

C. If the Contractor defaults or neglects to carry out the work in accordance with the Contract Documents or fails to perform any provision of the Contract, the Owner may, after ten (10) days written notice from the Project Architect/Engineer to the Contractor and without prejudice to any other remedy he may have, make good such deficiencies. In such case, an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including the cost of the Project Architect/Engineer's additional services made necessary by such default, neglect or failure. Such Change Order **shall not** require the approval of the Contractor.

D. The Contractor and his surety shall be and remain liable to the Owner for any excess cost or damages occasioned to the Owner as the result of the actions set forth in this Article.

E. If the Project Architect/Engineer accepts Work which is not in accordance with the Contract Documents, he may do so instead of requiring its removal and correction, in which case the Contract Sum will be adjusted as appropriate and equitable. Such adjustment shall be made whether or not final payment has been made.

22. CONSTRUCTION SCHEDULE AND REPORTS

A. At the Pre-construction conference, the Contractor shall present to the Project Architect/Engineer a construction schedule and a Schedule of Values. The Contractor (or designated prime contractor) shall coordinate each contractor's or subcontractor's schedule and establish a mutually acceptable schedule for the entire progress of the Work and shall deliver the schedule to the Project Architect/Engineer in a form satisfactory to the Division of Facilities Management and the Owner. Schedule shall be coordinated with and approved by the Project Architect/Engineer, the Owner, and Division of Facilities Management.

B. Include in the construction schedule the number of allowed adverse weather days as noted in Document E, Article 50 of this manual.

C. The construction progress schedule shall include as a minimum the following detail:

1. The proposed schedule for tasks identified in the Schedule of Values in bar chart form.

2. Important milestones which may impact the construction progress schedule shall be identified by a critical path schedule using either bar chart or the Critical Path Method. Projects with construction costs below $250,000 shall require a bar chart schedule. Projects with construction costs above $250,000 shall require both a bar chart schedule and a Critical Path Method schedule.

3. Anticipated monthly payments for the duration of the project by the Owner based on the rate of progress proposed by the Contractor upon request.

4. Submission dates of all details and shop drawings.

5. Procurement and delivery dates for all equipment and material.

6. Weekly breakdown of work and activities for each major component of work. Define special items as directed by the Project Architect/Engineer.

7. Intended time for starting and completing each activity including indication of float time.

D. There will be no payment of any periodic estimate until the Contractor's list of Material Suppliers, Construction Progress Schedule, and Schedule of Values have been approved by the Project Architect/Engineer.

E. The construction progress schedule shall be maintained current at all times by the Contractor (or the designated prime contractor). Revisions shall be made in the same detail as the original and shall be accompanied by written explanation of the reasons for the revision and shall be subject to the approval of the Project Architect/Engineer. Copies of the revised construction progress schedule shall be delivered to the Project Architect/Engineer, Owner, and the Division of Facilities Management monthly during the course of the Work.

F. The Contractor (or designated prime contractor) shall submit monthly to the Project Architect/Engineer progress reports showing actual percentage of each activity completed, estimated future progress and anticipated completion time of such activity.

G. Should the Contractor fail to meet completion dates required by the progress schedule, the Owner's representative may issue a written notice to the Contractor requiring the Contractor to submit a written plan for expediting the Work to comply with the progress schedule. The plan shall be submitted to the owner's representative within ten (10) days after the Contractor's receipt of such notice. The Contractor's plan shall specify the dates and means by which the Contractor will bring the work back on schedule. Means may include, but are not limited to, hiring additional workers, working additional hours, utilizing additional equipment, or expediting delivery of materials. If the Contractor fails to submit a written plan or fails to comply with dates specified in the plan for bringing the Work back on schedule, the owner's representative may, by written notice, require that additional workers, plant and equipment be placed on the Work or require that hours, in addition to regular hours, be worked until progress is as scheduled, with no additional cost to the Owner. The Contractor shall immediately implement requirements of the notice.

23. TIME FOR COMPLETION

A. Time limits stated in the Contract Documents are of the essence of the Contract. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for the completion of the Work, described in the Contract is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industry conditions prevailing in this locality. Unless otherwise provided in the Contract, the time for completion is measured by calendar days, not work days.

B. If the Contractor's schedule provides for an earlier completion date than the established contract completion date, and the agency desires to change the contract completion date to the earlier date, this may be done through a change order to the contract. This change order does not require the approval of the Contractor.

C. Except in cases of emergency or by agreement or instruction of the Project Architect/Engineer in writing, the Contractor shall not knowingly, prematurely commence operations on the site or elsewhere prior to the effective date of insurance as required to be furnished by the Contractor, and by the effective date of the Notice to Proceed.

D. The Contractor shall proceed expeditiously with adequate forces and shall achieve Final Completion within the time specified on Contract Documents. A delay in the delivery to the site of any materials or

equipment will not be considered as a valid reason for a time extension to the Contract.

E. At the end of the time for completion, all equipment and systems shall be fully operational and functioning as required by the specifications. Testing shall be completed and all defects discovered as a result of this testing shall be corrected before the completion date.

F. It is further agreed that time is of the essence of each and every portion of this Contract wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this Contract. These are not compensable delays. Time extensions, only if they impact the progress of the Work in a negative manner, may be granted if the delay is due:

1. To unforeseeable cause 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, fires, floods, epidemics, quarantine restrictions, strikes or embargoes. For weather delays, see (G) below.

2. To any delays of subcontractors or suppliers occasioned by any of the causes specified in subsection 1) of this article.

3. The Contractor shall, within ten (10) days from the beginning of such delay, notify the Project Architect/Engineer, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of his decision in the matter.

G. Claims for delay due to “unusually severe weather” affecting the completion time shall only be considered when meeting the following criteria:

1. Definitions:

(a) “Adverse weather” – weather conditions during a definite time and place that are unfavorable to construction activities.

(b) “Unusually severe weather” – weather that is more severe than the “adverse weather” anticipated for the season at the location of the construction project.

2. The weather experienced at the project site during the contract period must be found to be unusually severe, that is, more severe than the adverse weather to be anticipated for the project location during any given month.

3. The delay must be related to the unusually severe weather and not due to the Contractor’s fault, negligence, or his failure to maintain the approved construction schedule.

4. The unusually severe weather must cause actual delay to the completion time of the project. A claim for unusually severe weather delay must document actual delay to a scheduled critical path construction activity for at least 50% or more of the Contractor’s scheduled workday. On projects without critical path scheduling, the Owner may withhold final determination of the delay claim until the Contractor submits an updated construction schedule for approval.

5. Anticipated “adverse weather” days. The Contract includes and anticipates that adverse weather conditions, including rain, snow, wind and extreme temperatures, will occur during the period of the Contract and will delay the Work. The schedule of monthly anticipated “adverse weather” delay days shall be incorporated in the “Time of Completion” for the project.

6. To meet the criteria for an unusually adverse weather delay day, one of more or the following requirements must be met within the work day and cause and delay a scheduled critical path construction activity, as noted in G4 above.

(a) Rainfall equal to or greater than 0.10 inches.

(b) Average temperatures less than 20 degrees Fahrenheit.

(c) Snowfall in excess of 1.0 inches.

(d) Sustained wind speed in excess of 25 mph.

7. Evaluation of a claim for delay caused by unusually severe weather shall be as follows:

(a) Claims for delay shall be submitted no later than ten (10) days after the end of the month to be evaluated.

(b) The Contractor shall submit documentation indicating cause, affect and delay including the weather criteria on each adverse weather delay day that occurred during the month to be evaluated. Any day that is submitted that does not meet the criteria shall be deemed not to qualify as an adverse weather delay day.

(c) Documentation of adverse weather criteria shall be submitted in their original form from a recognized weather recording station, newspaper, computer information service, or other Owner approved source. In the event there is no weather recording source at or near the project location, the contractor shall record the daily weather information in a format meeting the criteria in G6 above. The weather documentation source will be determined at the pre-construction meeting.

(d) In order to calculate the delay from the supplied tables, deduct the number of anticipated adverse weather delay days listed for the month being evaluated.

(e) If the monthly total of qualifying adverse weather delay days exceeds the number of anticipated adverse weather delay days, the net difference in qualifying delay days will constitute unusually severe weather. The number of qualifying delay days will be added to the Contract as an adjustment to the "Time of Completion". There shall be no change in the Contract amount for this type of claim.

H. Acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, that will cause delay to this Contractor, shall be brought to the attention of the Project Architect/Engineer in writing within ten (10) calendar days. Failure to notify the Project Architect/Engineer immediately will cause the Contractor to waive his right to extra days or damages therefrom.

I. Permitting the Work or any part of it to continue after the time fixed for its completion, or after the date to which the time for completion may have been extended, shall in no way operate as a waiver on the part of the Owner of any of his rights under the Contract.

J. Liquidated damages are prescribed in Document E, Article 49 - Liquidated Damages, and are hereby agreed to by all parties.

K. The Contractor, and any of its subcontractors, suppliers, material men or any other such party, shall have no claim for monetary compensation, monetary claims, or damages, of whatever kind or nature, for delay, hindrance, or inefficiency. The Contractor's only claim and the Contractor's only remedy for such delay, hindrance or inefficiency shall be for an extension of time as provided in Article 23 unless the claim is the result of (a) a negligent act, error or omission of the Project Architect/Engineer; (b) an unforeseeable site condition materially differing from that shown in the construction documents; or, (c) a negligent act or omission or breach of contract by the Owner. In these cases the Contractor shall receive compensation as provided in Article 12 - Changes in the Work.

L. At such time as the Contractor believes the project to be substantially complete, the Contractor shall notify the Project Architect/Engineer and request an inspection. The Project Architect/Engineer shall conduct an inspection and prepare a list of all items that have not been completed (if the Project Architect/Engineer determines that the construction is not complete and ready for the inspection, he shall so inform the Contractor). The Contractor shall complete all the items listed by the Project Architect/Engineer <u>before the adjusted completion date in the contract (contract completion date with change orders adjustments).</u> Upon completion of all such items, the Contractor shall request a final inspection which shall be conducted by the Project Architect/Engineer.

M. If the Project Architect/Engineer determines that any of the items listed have not been completed by the adjusted completion date of the contract, the Contractor shall be responsible for the cost of the additional Project Architect/Engineer's services beyond the adjusted completion date of the contract.

The Contractor shall not be responsible for the cost of any additional inspections if the failure to complete listed items is caused by the Project Architect/Engineer or Owner. Such costs shall be covered by a change order and shall be paid to the Project Architect/Engineer. Such change order shall not require the approval of the Contractor.

24. RIGHT OF OWNER TO SUSPEND CONTRACT

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

B. An adjustment will be made for increases in the cost of performance of the Contract caused by suspension, delay or interruption. No adjustment will be made to the extent:

1. that performance is, was, or would have been so suspended, delayed or interrupted by another cause for which the Contractor in whole or in part is responsible, or

2. that an equitable adjustment is made or denied under another provision of this Contract.

C. Should the Owner be prevented or enjoined from proceeding with the work either before or after the start of construction by reason of any litigation, act of God, or other reason beyond the control of the Owner, the Contractor shall not be entitled to make or assert claim for damage by reason of said delay; but time for completion of work will be extended to such reasonable time as the Owner may determine will compensate for time lost by such delay; such determination to be set forth in writing. The Contractor will not be required to hold his bid price for longer than three months. The Owner may either negotiate a Change Order with the Contractor for any additional costs, or terminate the Contract following the three-month period. Should the Contract be terminated, the Contractor will be compensated for all work performed to date on the Contract.

25. RIGHT OF OWNER TO TERMINATE CONTRACT - CAUSE AND CONVENIENCE

A. In the event that any of the provisions of this Contract are violated by the Contractor, or by any of his subcontractors, the Director of the Division of Facilities Management, on behalf of the Secretary of Administration, may serve written notice upon the Contractor and the surety of their intention to terminate the Contract for cause. Such notice shall contain the reasons for such intention, and unless within ten (10) days after the serving of such notice upon the Contractor, such violation or delay shall cease and satisfactory arrangement or correction be made the Contract shall upon expiration of said ten (10) days, cease and terminate.

B. In the event of any such termination for cause the Director of the Division of Facilities Management shall immediately serve notice thereof upon the surety and the Contractor, and the surety shall have the right to take over and perform the Contract, provided, however, that if the Surety does not commence performance thereof within ten (10) days from the date of the mailing to such surety of notice of termination, the Owner may take over the Work and prosecute the same to completion by Contract at the expense of the Contractor, and the Contractor and his surety shall be liable to the Owner for any excess cost above the original Contract amount occasioned the Owner thereby. In such event, the Owner may take possession of and utilize in completing the Work, such materials, appliances and plant as may be on the site of the Work and necessary therefore.

C. The director of the Division of Facilities Management, on behalf of the Secretary of Administration may, at any time, terminate the contract for convenience and without cause. Upon service of written notice the contractor shall:

1. cease operations as directed by the Director in the notice,

2. take actions necessary or as directed in the notice for the protection and preservation of the Work, and

3. except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts or purchase orders.

D. All materials previously paid for by the Owner shall be delivered to or remain on the construction site.

E. In case of termination for convenience the contractor shall be entitled to payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed, not to exceed 10% for each.

26. BONDS

A. A Performance Bond shall be furnished to the Owner by the Contractor in an amount equal to one hundred percent (100%) of the Contract price as security for the faithful performance of this Contract and as security for the payment of all persons performing labor and furnishing materials in connection with this Contract. Bonds are to cover all claims discovered during construction or prior to the end of the warranty period.

B. A Public Works Bond as required by K.S.A. 60-1111 shall be furnished to the Owner by the Contractor in the amount of one hundred percent (100%) of the contract price and shall be filed with the Clerk of the District Court in the county where the Project is being constructed. A Public Works Bond is **not** required for projects with a contract price below $100,000.

C. Bonds shall be issued by a surety company authorized by Kansas law and returned within 15 calendar days.

27. SUBSTITUTE BONDS

A. If at any time the Owner for justifiable cause, shall become dissatisfied with the surety bound by the Performance and Public Works Bond, the Contractor shall within fifteen (15) days after notice from the Owner so do to, substitute an acceptable bond in such form and sum and signed by such other surety as may be satisfactory to the Owner.

B. No further payments shall be deemed due nor shall be made until the new surety shall have furnished such an acceptable bond to the Owner.

C. The credit due on premiums for unused portion of canceled bond shall be applied to premiums on the substitute bond and the difference for remaining premium cost will be paid by the Owner.

28. SALES TAXES

A. If the project is exempt, the Owner will secure a project exemption certificate for the project in accordance with the rules of Kansas Department of Revenue. The Contractor shall refer to the Form of Bid and Supplemental General Conditions to determine the tax exemption status of the project.

B. If the project is tax exempt, the Owner shall obtain a project exemption certificate, and furnish a copy of the same to the Contractor. The Contractor shall furnish a copy of the project exemption certificate to all suppliers from whom purchases are made, and to all subcontractors. Suppliers who supply materials for the project shall execute invoices covering the same bearing the project number from such certificate. Upon completion of the Project, each Contractor, and each Subcontractor who used the project exemption certificate to claim exemption, shall furnish to the Owner a sworn statement, on a form provided by the Director of Taxation, that all its purchases made exempt under the project exemption certificate were entitled to exemption. All invoices shall be held by the Contractor and Subcontractors for a period of five (5) years and shall be subject to audit.

C. If a project is not exempt, the Contractor and each Subcontractor shall pay all sales tax required by law on labor and materials purchased to perform the contract. The Contractor shall include in his bid all such sales tax that is required to be paid on the material and labor needed to perform the contract. The type of project, the status of its owner, and the existence of a project exemption certificate will determine whether the contractor and subcontractor are required to pay sales tax on labor or material or are exempted for paying tax on labor or material or on both.

29. QUANTITIES OF ESTIMATES

A. Wherever the estimated quantities of work to be done and materials to be furnished under this

Contract are shown in any of the documents including the proposal, they are given for use in comparing bids and the right is especially reserved to increase or diminish them as they may be deemed reasonably necessary or desirable to complete the Work contemplated by this Contract, and such increase or diminution shall in no way vitiate this Contract, nor shall any such increase or diminution give cause for claims or liability for damages.

30. PAYMENTS TO CONTRACTOR

A. The Owner will make partial payments to the Contractor for the value, proportionate to the amount of the Contract, of all labor and material incorporated in the work during the preceding calendar month upon receipt of certification from the Project Architect/Engineer and approval of the Owner and the Facilities Planning, Design & Construction. No payment will be made to the Contractor until the Division of Purchases has received all documentation required to be submitted by the Contractor.

B. The Contractor shall submit to the Project Architect/Engineer a request for certification for each payment, on current AIA documents G702 and G703. Contractors shall be responsible for securing their own AIA forms. Each item identified on the Schedule of Values shall be broken down into material and labor as separate items on the G703. This request for certification shall be submitted in the number of copies directed, and shall include the Contractor's detailed estimate of all items and activities of work to be performed, in the space provided on the form. If requested, the statement shall be supported by such evidence as may be required, showing the Contractor's right to the payment claimed.

1. Project architect/engineer will review, approve and forward undisputed requests to the Owner within seven (7) days of receipt.

C. Periodic estimates of Work completed shall be correlated with the schedule of values and furnished to the Project Architect/Engineer with requests for partial payment.

D. Request for payment for preparatory work and materials delivered and suitably stored at the site to be incorporated into the work at some future period, will be given due consideration. The Project Architect/Engineer may, under certain circumstances, approve payment up to ninety percent (90%) of the value of manufactured products delivered to a suitable warehouse at or near the locale of the project. Stored products shall be insured to one hundred percent (100%) of their value. Proof of said insurance shall be given to the Project Architect/Engineer. A bill of sale and their costs, including an itemized inventory of all stored products, shall be obtained and provided the Project Architect/Engineer. Approval of the surety company of the Contractor shall also be obtained and provided to the Project Architect/Engineer before these items are stored. Insurance for stored materials shall include transportation from the warehouse to the job site.

E. Payments by the Owner will be due within thirty (30) days after receipt of certified request for payment from the Project Architect/Engineer.

F. Ten percent (10%) of the Work Completed to Date will be retained on each payment request until final completion and acceptance of all Work covered by the Contract.

1. Upon 50% completion, the Architectural Services Section, Owner and Project Architect/Engineer **may** reduce retainage to a minimum of 5% of the total project cost upon the following conditions:

(a) Reduction of retainage is not automatic. Any reduction must be requested. Approval may be withheld for a variety of reasons, to include progress not on schedule, concerns about quality of work, etc. Applications for payment that assume a reduction before it is approved will be returned for correction, thus delaying payment.

(b) Retainage of 10% is mandatory if the critical path progress of the work is not on schedule, including previously agreed upon change order days. If retainage had been reduced on previous applications for payment, and work falls behind the critical path schedule, retainage will revert back to the full 10% of the total invoiced cost to date on all applications until the work is back on schedule.

2. Retainage will be released on any undisputed payment within thirty (30) days after Substantial

Completion of the project. When a subcontractor continues to work on the project after Substantial Completion, the Owner may withhold that portion of the retainage attributed to the subcontractor until thirty (30) days after the work is completed.

G. All material and work covered by partial payments shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and adequate protection from weather, damage, vandalism, theft, and fire of materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of the Owner to require the fulfillment of all of the terms of the Contract.

H. If overpayment occurs, the Owner has the right to stop payment applications until the actual Work completed is equal to the payment applications and certified by the Project Architect/Engineer to be in compliance with the contract documents.

I. Final payment will be made within thirty (30) days after final completion of the work.

J. Prior to the issuance of final payment, the Contractor shall submit a certification that all debts and claims against this project have either been paid in full or otherwise satisfied in the form of an Affidavit of Contractor.

K. No recourse shall be had against any individual employee or agents of the State of Kansas, or officer thereof, for any payment under the contract or any claim based thereon.

31. PAYMENTS BY CONTRACTOR

A. The Contractor shall pay within seven (7) days of receipt of payment from the Owner, each subcontractor out of the amount paid to the Contractor on account of each subcontractor's work, the amount to which said subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of each subcontractor's work. The Contractor shall, by an appropriate agreement with each subcontractor, require each subcontractor to make payments to his sub-subcontractors in similar manner.

32. SUBCONTRACTOR PAYMENT INDEMNIFICATION

A. The Contractor agrees that he will indemnify and save the Owner harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, material suppliers, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, incurred in the furtherance of the performance of this Contract.

33. ACCEPTANCE OF FINAL PAYMENT AS RELEASE

A. The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

1. unsettled liens

2. faulty or defective work appearing after Final Project Completion

3. failure of the Work to comply with the requirements of the Contract Documents, or

4. terms of any special guarantees or warranties required by the Contract Documents.

B. The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and still unsettled.

34. USE AND OCCUPANCY PRIOR TO ACCEPTANCE

A. If the construction schedule is current, the Contractor agrees to the Owner's use and occupancy of a portion or unit of the Project before the date of final completion, provided:

1. The Owner assumes all costs for maintenance of heat, electricity and water, and provides custodial care and maintenance of the occupied portions.

2. The Owner accepts all work as fully complete within that portion or unit of the Project to be occupied, at time of occupancy.

B. If the Construction schedule is not current, the Contractor agrees to the Owner's use and occupancy of all or a portion of the project:

1. Contractor is responsible for completing scheduled Work as noted on inspection report listing any incomplete work and Work as defined in the Contract Documents.

2. Contractor is responsible for cleaning up dust and debris caused by work completed in the occupied areas.

3. Contractor is responsible for a final clean-up in all areas where occupancy has occurred prior to final completion.

35. GENERAL GUARANTEE

A. The Contractor shall remedy and make good all defective workmanship and materials and pay for any damage to other work or property resulting therefrom, which appear within a period of one year from the date of final project completion, providing such defects are not clearly due to abuse or misuse by Owner. The Owner will give notice of observed defects with reasonable promptness. The one (1) year period will not apply to defective workmanship and materials not discovered within the one year period.

B. Neither the final certificate for payment nor any provision in the Contract Documents nor partial or entire occupancy of the premises by the Owner shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any expressed warranties or responsibility for faulty materials or workmanship.

C. The guarantee on all work covered under this contract shall begin on the date of Final Project Completion or substantial completion if applicable. If the building is partially occupied, the date of partial occupancy shall establish the beginning date for the guarantee period for that section of the building and for all equipment in place, operable and used for this area. Any additional work in this area shall be considered warranty work by the Contractor.

D. Where guarantees or warranties are required in sections of specifications for periods in excess of one year, such longer terms shall apply.

E. Within nine months after official acceptance of a Project, the Owner, the Contractor, the Project Architect/Engineer and the Architectural Services Section shall conduct a full inspection of the completed project and the Contractor shall promptly correct all items noted.

F. If, within one year after the date of Final Completion of the Work or designated portion thereof, or after the date for commencement of warranties, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found not to be in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Project Architect/Engineer to do so unless the Project Architect/Engineer has previously given the Contractor a written acceptance of such condition.

G. Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of time period of one year as described in this Article relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time with which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the his obligations other than specifically to correct the Work.

36. ARBITRATION, DAMAGES AND WARRANTIES

A. Notwithstanding any language to the contrary, no interpretation of this Contract shall be allowed to find the State or any agency thereof has agreed to binding arbitration, the payment of damages or penalties upon the occurrence of a contingency, or to permit disclaimer of any or all warranties.

37. PATENTS AND ROYALTIES

A. The Contractor shall pay all royalty and license fees. The Contractor shall defend suits or claims for infringement of patent or copyright rights and shall hold the Owner, its officers, agents and employees and the Project Architect/Engineer harmless from all loss and expense on account thereof.

B. If the Contractor uses any item covered by a patent or trademark, he shall reach an agreement with the holder of the patent or copyright.

38. INDEMNIFICATION

A. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and the Project Architect/Engineer and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense 1) 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 2) 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. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

B. In any and all claims against the Owner or the Project Architect/Engineer or any of their agents or employees by any employee 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, the indemnification obligation 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 workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

C. The obligations of the Contractor shall not extend to the liability of the Project Architect/Engineer, 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 Project Architect/Engineer his agents or employees provided such giving or failure to give is the primary cause of the injury or damage.

39. ASSIGNMENTS

A. The Contractor shall not assign the whole or any part of this Contract or any moneys due or to become due hereunder without written consent of the Owner; Facilities Planning, Design & Construction; Director of Purchases and the Director of Accounts and Reports. In case the Contractor assigns all or any part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the work called for in this Contract.

B. Such assignment shall not be made without the consent of the surety unless the surety has waived its right to notice of assignment.

40. REQUIRED PROVISIONS DEEMED INSERTED

A. Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly

inserted, then upon the application of either party the Contract shall forthwith be physically amended to make such insertion or correction.

41. KANSAS ACTS AGAINST DISCRIMINATION

A. The Contractor hereby agrees and covenants as a condition of the Contract that he will comply with the Kansas Act Against Discrimination, (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the Americans With Disabilities Act (42 U.S.C. 12101 et seq.), and that his failure to do so may be deemed to be a breach of Contract and may subject the Contract to be terminated.

42. ANTITRUST

A. For good cause, and as consideration for executing this Contract, the Contractor, acting herein by and through its authorized agent, hereby conveys, sells, assigns and transfers to the State of Kansas all right, title and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of Kansas pursuant to this Contract.

43. OPTIONAL PERFORMANCE AND PAYMENT GUARANTEE

A. The Contractor may elect to use a certificate of deposit as a performance and payment guarantee in lieu of providing a Performance Bond and Public Works Bond. The certificate of deposit shall have a value of not less than the amount of the Contract, and shall serve the purpose of the Performance and Public Works Bonds as defined in Articles 26 and 27 of the General Conditions of the Contract.

B. The Director of Purchases may accept a certificate of deposit payable to the State of Kansas, without condition, in lieu of any required surety bond from a bidder or contractor in the case of any contract for construction, repairs or improvements under K.S.A. 75-3739, 75-3741 or 60-1111 and amendments thereto.

C. The certificate of deposit shall be subject to forfeiture to the State of Kansas and shall be in a form and under such conditions as may be prescribed by the Director of the Division of Purchases for surety bonds in accordance with K.S.A. 60-1112 and amendments thereto.

D. Each such certificate of deposit shall be retained by the State for at least six (6) months after the final acceptance of the work for which the contract was entered into. At the end of such time period, the certificate of deposit may be endorsed back to the Contractor if there are no claims by the State under the Contract or by any person making a claim against the certificate of deposit.

E. All interest accruing under any such certificate of deposit shall belong to the contractor unless the certificate of deposit is forfeited to the State of Kansas.

44. SIMULTANEOUS EXECUTION OF CONSTRUCTION CONTRACTS

A. In order to expedite the processing of Construction Contracts, bidders agree to the simultaneous execution of a copy of this document by all parties. After the execution of their copy of the agreement, the parties shall submit them to the State of Kansas, Division of Purchases, for assembly and may make a copy for their files if they wish. Upon receipt of all executed copies, and the submittal of the required bonds and insurance certificates, the Division of Purchases shall date and assemble the copies and it shall constitute a binding agreement as of the date of assembly. The assembled copies shall be retained in the Division of Purchases, and a fully-executed set of contracts shall be delivered to the Contractor and State agency.

B. It is further agreed that if any party wishes to change any part of the Contract, they shall notify the Division of Purchases prior to signature. The Division of Purchases shall review the request and if the changes are acceptable, a new contract shall be prepared and resubmitted to all parties for their signatures and processing as mentioned above.

45. EVALUATION

A. Bidders are advised that if awarded the Project, their performance will be evaluated by the

Architectural Services Section with input from the State agency for whom the project is completed. This evaluation will remain on file and will be considered before the award of future projects. The Contractor, upon request, may receive a copy of the evaluations and prepare a response to the same. Responses will also be kept on file and considered in the same manner as the evaluations.

46. DRUG TESTING

A. Bidders are advised that in some circumstances federal regulations require drug testing of employees who install or maintain pipelines. Bidders should determine if drug testing is required on this project and include in its bid the complete cost for all such testing. Questions concerning these requirements should be directed to the Kansas Corporation Commission, Natural Gas Operations, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604-4027, (785) 271-3100.

47. LICENSURE

A. All plumbing, electrical and heating, ventilation and air conditioning work on the job site shall be performed or supervised by a journeyman, with a current license in that particular trade. Licenses shall be available for inspection at the work site, and if a license is not available, work of that particular trade shall cease. Licenses from any state or political subdivision will be recognized. Licenses that require passage of Block/Experion tests are preferable.

END OF DOCUMENT D