**JOB ORDER CONTRACT**

**Section 00520**

THIS AGREEMENT is entered into this day of 2019, by and between

(name and address) hereinafter referred to as the Contractor, and the Board of Trustees of the University of Arkansas acting for and on behalf \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereinafter referred to as the Owner, and consists of this Section 00520 and the Contract Documents, as defined in Section 00700.

WITNESSETH:

That for and in consideration of the amount set forth in each Job Order, the Contractor hereby agrees to furnish all tools, labor, equipment, and materials, and to build and construct projects designated by job orders issued by the System or by member campuses, units or divisions of the University of Arkansas System (hereafter “campus” or “campuses”).

* + Contractor’s pricing for job order services shall employ the following co-efficient, to be applied as outlined in the University of Arkansas System’s 2019 Invitation to Submit Proposals for Job Order Contracting Services [or project/JOC manual for campuses that use this approach] : \_\_\_\_\_\_\_\_\_\_\_.

The Contract is for Job Order Contracting for Construction Services for the benefit of the Owner, more specifically described in the Contract Documents, which are incorporated herein by reference. All construction shall be in exact accord with the Contract Documents. The Owner shall have direct contract supervision, unless a Design Professional has been designated to supervise a Project. Said construction shall be to the satisfaction of the Owner and the Design Professional engaged by the Owner, and in accordance with the laws of the State of Arkansas. The Work shall be subject to inspection and approval at any time by the Owner, the Design Professional, and any appropriate state and federal agencies.

1. Owner may at any time during the progress of the work alter, change, subtract from, or add to said Contract Documents without violating this Agreement or the terms thereof. Said changes, alterations, subtractions, or additions shall be set forth in writing in a document referred to as a “Change Order.” Said document shall not be effective unless approved by the Owner and the Design Professional.
2. The Contractor agrees, for the consideration set forth in the Proposal Form, to begin work within 7 calendar days after a Notice to Proceed is issued, or within such other time as is provided in the Notice to Proceed, and to complete the work within the number of consecutive calendar days of the start date established by each Notice To Proceed. If the Contractor fails to complete the work within the time limit herein specified, it shall pay to the Owner, as liquidated damages and not in the nature of a penalty, the sum specified in the job order for each calendar day delayed, it being understood and agreed between the parties hereto that the said sum fixed as liquidated damages is a reasonable sum, considering the damages that Owner will sustain in the event of any such delay, and said amount is herein agreed upon and fixed as liquidated damages because of difficulty of ascertaining the exact amount of damages that may be sustained by such delay. The said sum shall be deducted from the final amount or the next estimate due the Contractor.
3. Should Contractor be delayed in the execution or completion of the work by the act, neglect or default of the Owner, or by any damage by fire, weather conditions or other casualty or event for which the contractor is not responsible, or by general strikes or lockouts caused by acts of employees, then any extended period shall be determined and fixed by the Owner. Said extended period shall be the time for a period equivalent to the time lost by reason of any or all of the causes aforesaid, but no such allowance shall be made unless a claim therefore is presented in writing to the Owner within seven calendar days of the occurrence of the event causing the delay.
4. It is mutually agreed between the parties that in the performance of this Contract, Contractor is acting independently and in no sense as Agent of the State or the Owner. Contractor shall not let, assign, or transfer this contract or any interest therein, without the written consent of the Owner.
5. It is agreed and understood between the parties hereto that the Contractor shall accept, and the Owner will pay for, the work, at the prices stipulated in the Contract Documents, such payment to be in the form of legal tender, and the payment shall be made at the time and in the manner set forth in the Contract Documents.
6. Any laborer or mechanic employed by the Contractor or any Subcontractors for a Project, directly on site for the work covered by the Contract Documents, shall be paid a rate of wages required by the Contract Documents. If the Owner discovers that wages less than the rate of wages specified by the Contract Documents have been or are being paid, then the Owner, after giving written notice to the Contractor, will terminate the Contractor’s right to proceed with the project work or such part of the work as to which there has been a failure to pay the required wages and to prosecute the work to completion by contract or otherwise, and the Contractor and his sureties shall be liable to the Owner for any excess costs occasioned thereby.
7. Contractor shall promptly repair, at its own expense and to the satisfaction of the Owner, damage done by the Contractor or its subcontractors at the work site, or to the public property or buildings, or both, and will save the Owner harmless from all claims of any person for injury to person or to property occasioned by any act or omission of Contractor or its subcontractors while in the execution of the work specified.
8. The Owner may terminate this agreement to the extent Owner’s funds are no longer appropriated or lawfully available for expenditures under this agreement.
9. Failure to make any disclosure required by Governor’s Executive order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the Agency.
10. The Contractor shall prior to entering any agreement with any subcontractor, for which the total consideration is greater than $25,000, require the subcontractor to complete a Contract and Grant Disclosure and Certification Form. The contractor shall ensure that any agreement, current or future between the contractor and a subcontractor for which the total consideration is greater than $25,000 shall contain the following:

“Failure to make any disclosure required by Governor Executive Order 98-04, or any violation of any rule, regulation or adopted pursuant to that Order, shall be a material breach of the term of this subcontract. The party who fails to make the required disclosure or who violates the rule, regulation, or policy shall be subject to all legal remedies available to the contractor.”

1. The Contractor shall, within ten days of entering into any agreement with a Subcontractor, transmit to the Owner, a copy of the Contract and Grant Disclosure and Certification Form completed and signed by the subcontractor and a statement containing the dollar amount of the subcontractor.
2. The terms and conditions regarding the failure to disclose and conditions which constitutes material breach of contract and rights of termination and remedies under the Executive Order 98-04 are hereby incorporated within.
3. This Agreement is for a term of one year from the date hereof, and may be extended for additional periods not exceeding four years in the aggregate if the price remains mutually agreeable to the parties and the Owner is satisfied with the quality of Contractor’s work.
4. Nothing in this Contract shall be construed to waive the sovereign immunity of the Owner, which includes the Board of Trustees of the University of Arkansas.
5. In accordance with Ark. Code Ann. § 25-1-503, Contractor hereby certifies to Owner that Contractor (a) is not currently engaged in a boycott of Israel and (b) agrees for the duration of this Agreement not to engage in a boycott of Israel. A breach of this certification will be considered a material breach of contract. In the event that Contractor breaches this certification, Owner may immediately terminate this Agreement without penalty or further obligation and exercise any rights and remedies available to it by law or in equity.
6. Contractor agrees and certifies that it does not employ illegal immigrants and will not employ illegal immigrants during the term of this Agreement.

Executed by the parties, who represent that each has the authority to enter into this Contract.

Contractor

By*:*  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

###### The Board of Trustees of the

###### University of Arkansas acting for

###### and on behalf of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SECTION 00700 – JOB ORDER CONTRACT GENERAL CONDITIONS**

**ARTICLE 1 -- GENERAL PROVISIONS**

* 1. **DEFINITIONS**
     1. Contract Documents: The Contract Form (Section 00520), the Request for Proposals, Instruction to Proposers, the Contractor’s Proposal Form, all Addenda, this Section 00700 General Conditions, and any Section 00800 Supplementary Conditions attached hereto**.** For each Project the Contract Documents also include the job order, the Owner’s plans and specifications, approved Change Orders, and any other documents agreed upon by the Owner and the Contractor.
     2. Contract: The Contract Documents form the Contract for construction. The Contract Documents will not be construed to create a contractual relationship between the Design Professional and Contractor, between the Owner and a subcontractor, between the Owner and Design Professional, or between entities other than the Owner and Contractor.
     3. Contract Sum: The amount to be paid the Contractor for the Work, as established in the Contract Documents.
     4. Work: Construction and services required by the Contract Documents whether completed or partially completed, including tools, labor, equipment, supplies, transportation, handling, and incidentals provided by the Contractor.
     5. Project: The total project described in the job order and related Contract Documents.
     6. Drawings: Graphic and textual portions of the Contract Documents showing the design, location, and dimensions and size of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.
     7. Specifications: Written requirements for materials, equipment, systems, standards, and workmanship for the Work, and performance of related services.
     8. Project Manual: Volume, which may include the bidding requirements, forms, contracting requirements, and the Specifications.
     9. Owner: The campus, unit or division of the University of Arkansas System issuing a job order. The term Owner includes the Owner and the Owner’s authorized representative.
     10. Contractor: The person or entity identified as such in the Contract. The term Contractor includes the Contractor and the Contractor’s authorized representative.
     11. Design Professional (Architect/Engineer/Consultant): The person or entity identified as such by the Owner in connection with a Project. When no Design Professional has been engaged by Owner, the term “Design Professional” means the Owner, unless the context dictates otherwise.
     12. Subcontractor: Any person, firm, or corporation with a direct contract with the Contractor who acts for or in behalf of the Contractor in executing a portion of the Work. The term subcontractor is referred to as singular in number and means the subcontractor or the subcontractor-authorized representative.
     13. Inspector: A duly authorized representative of the Owner, and Design Professional, designated for detailed inspection of materials, construction, workmanship, and methods of construction.
     14. Site: The particular location of that part of the Project being considered.
     15. Contract Time: The period of time identified in the Contract Documents for Substantial Completion of the Work, including authorized adjustments made as part of Change Orders agreed to by the Owner, the Design Professional and the Contractor.
     16. Date of Substantial Completion: The date certified by the Design Professional and the Owner.
  2. **INTENT**
     1. The Contract Documents are complementary and, subject to the order of interpretive precedence described in section 3.3.2, what is required by one will be as binding as if required by all. Performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable as necessary to produce the results required by the Contract Documents.
     2. Organization of the Specifications into divisions, sections, and articles, and arrangement of Drawings will not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.
     3. Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.
  3. **CAPITALIZATION**
     1. Terms capitalized in the Contract Documents include those which are specifically defined, the titles to numbered sections and articles, identified references to paragraphs, and the titles of other published documents.
  4. **INTERPRETATION**
     1. Whenever in these Contract Documents the words "as ordered", "as directed", "as required", "as permitted", "as allowed", or words or phrases of like import are used, it shall be understood that the order, direction, requirement, permission, or allowance of the Owner and Design Professional is intended.
     2. Whenever in these Contract Documents the word "product" is used, it shall be understood that the materials, systems, and equipment will be included.
     3. Whenever in these Contract Documents the word "provide" is used, it shall be understood that it means to "furnish and install".
     4. The Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an", but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

**ARTICLE 2 -- OWNER**

* 1. **LAND**
     1. The Owner will provide the lands shown on the Drawings upon which the Work shall be performed. The Owner will provide a right-of-way for access to the project site.
     2. The Owner will provide base lines for the location of the principal component parts of the Work with a suitable number of bench-marks adjacent to the Work.
  2. **RIGHT OF ENTRY BY OWNER**
     1. The Owner will have the right to enter the property or location on which the Work shall be constructed. The Owner further reserves the right to construct or have its authorized agents construct such work as the Owner will desire, so long as these operations do not interfere with or delay the work being constructed under this Contract.
  3. **OWNER'S RIGHT TO CARRY OUT THE WORK**
     1. If the Contractor defaults or neglects to perform the Work in accordance with the Contract Documents, including the requirements with respect to the schedule of completion, and fails after ten days written notice from the Owner to correct the deficiencies, the Owner may deduct the cost of correction and any liquidated damages from the payment then or thereafter due the Contractor.

**ARTICLE 3 -- CONTRACTOR**

* 1. **GENERAL**
     1. The Contractor shall perform the Work in accordance with the Contract Documents.
     2. The Contractor shall furnish labor, materials, equipment, and transportation necessary for the proper execution of the Work unless specifically noted otherwise. The Contractor shall do all the work shown on Drawings and described in Specifications and all incidental work considered necessary to complete the project in a substantial and acceptable manner, and to fully complete the Work or improvement, ready for use, occupancy and operation by the Owner. Drawings and Specifications shall be interpreted by the Design Professional or by the Owner if no Design Professional exists for the Project.
     3. The Contractor shall cooperate with the Owner, Design Professional, inspectors, and with other contractors on the Project. Contractor shall allow inspectors acting in an official capacity to have access to the project site.
     4. The Contractor shall determine that the final and completed work on the project is in accordance with the Contract Documents. The failure of the Owner or Design Professional to find or correct errors or omissions in the use of materials or work methods during the progress of the work shall not relieve the Contractor from responsibility to correct all the defects in the project.
     5. The Contractor shall assist in making final inspections and shall furnish such labor and equipment as may be required for the final tests of equipment, piping, and structures.
  2. **REVIEW OF FIELD CONDITIONS**
     1. Before ordering material or doing Work, the Contractor shall verify all measurements involved and shall be responsible for the correctness of same. No extra charge or compensation will be allowed on account of difference between actual dimensions and the measurements indicated on Drawings; differences which may be found shall be submitted to Design Professional for consideration before proceeding with the Work.
     2. Drawings may show the location or existence of certain exposed and buried utilities as well as existing surface and subsurface structures. The Owner assumes no responsibility for failure to show any or all such utilities and structures on the Drawings or to show such in the exact location. It is mutually agreed such failure will not be considered sufficient basis for claims for extra work or for

increasing the pay quantities in any manner unless the obstruction encountered necessitates substantial changes in the lines or grades or requires the building of a special structure.

* 1. **REVIEW OF CONTRACT DOCUMENTS**
     1. The Contractor shall study and compare Drawings, Specifications, and other instructions and shall report to the Design Professional at once any error, inconsistency, or omission discovered.
     2. In the event of conflict among the Contract Documents, interpretations will be based on the following order of precedence, stated highest to lowest:
        1. The Agreement, including the General Conditions and any supplementary conditions;
        2. Addenda to Drawings and Specifications, with those of later date having precedence.
        3. Drawings and Specifications
        4. The Contractor’s Proposal
        5. The Request for Proposals.
     3. Since the Contract Documents are complementary, the Contractor shall take no advantage of any apparent error or omission in the Drawings and Specifications. The Owner or Design Professional shall furnish interpretations as deemed necessary for the fulfillment of the intent of the Drawings and Specifications.
     4. Discrepancies found between the Drawings and Specifications and actual site conditions or any errors or omissions in the Drawings or Specifications shall be immediately reported to the Design Professional or in the case where a Design Professional is not on the Project, the Owner shall be notified, who shall address such error or omission in writing. Work done by the Contractor after discovery of such discrepancies, errors, or omissions shall be at the Contractor's risk and expense.
  2. **REQUEST FOR SUPPLEMENTARY INFORMATION**
     1. The Contractor shall make timely requests of the Owner or Design Professional for additional information required for the planning and production of the Work. Such requests shall be submitted as required, but shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay. Contractor understands and agrees that it is Contractor’s duty to determine the need for, and to request said additional information in writing from the Design Professional by such date as allows Design Professional to provide the information to the Contractor by a date that will not adversely affect Contractor’s ability to complete the Work by the date specified in the Contract.
     2. Additional instructions may be issued by the Design Professional or Owner during the progress of the Work to clarify the Drawings and Specifications or as may be necessary to explain or illustrate changes in the Work.
  3. **SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES**
     1. Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.
     2. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
     3. Samples are physical examples that illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.
     4. The Contractor shall provide shop drawings, product data, samples and other submittals including settings, schedules, and other drawings as may be necessary for the prosecution of the Work in the shop and in the field, as required by the Drawings, Specifications, or Design Professional instructions.
  4. **LABOR AND MATERIALS**
     1. Except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, heating and cooling, power, transportation, superintendence, temporary construction of every nature, taxes legally collectible because of the Work, and all other services and facilities of every nature whatsoever necessary to complete the Work in accordance with the Contract Documents in an orderly and efficient manner. The sequence of construction operations shall follow the schedule of construction as approved by the Design Professional. The Work shall not be discontinued by the Contractor without approval of the Design Professional. Should prosecution of the Work be discontinued for any reason, the Contractor shall notify the Design Professional at least twenty-four hours in advance of resuming the Work.
     2. Materials and equipment furnished under this Contract will be subject to inspection by the Owner's authorized representative or by independent laboratories. Material, equipment, or workmanship that are not in accordance with the Contract Document requirements or which are otherwise defective may be rejected at any time before the acceptance of the Work even though the defective material, equipment, or workmanship may have been previously overlooked and estimated for payment. The Contractor shall replace defective equipment and material in accordance with the Contract Documents at no additional cost to the Owner.
     3. The Contractor shall provide materials and supplies not subject to liens, conditional sales agreements, or other agreement reserving unto the seller any right, title, or interest therein. All materials and supplies shall become the property of the Owner upon final acceptance of this Contract by the Owner.
     4. If shop tests are to be conducted, the Contractor shall notify the Owner of such tests so a representative may witness the tests, if desired.
     5. The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Design Professional, and in accordance with a Change Order.
  5. **UNAUTHORIZED WORK**
     1. Unauthorized includes, but is not limited to, work done without lines and grades having been given, work done beyond the lines or not in conformity with the grades shown on the Drawings or as provided by the Owner, Work completed without proper inspection and supervision, or any extra or unclassified work completed without written authority and prior agreement. Unauthorized work shall be at the Contractor's risk. Such unauthorized work, at the option of the Design Professional, may not be measured and paid for and may be ordered removed at the Contractor's expense.
  6. **SUPERINTENDENCE**
     1. The Contractor shall supervise and direct the Work. The Contractor shall be solely responsible for construction means, methods, techniques, sequences, and procedures and for coordinating portions of the Work under the Contract.
     2. The Contractor shall employ a qualified superintendent during the duration of the Project who is acceptable to the Owner and the Design Professional. The superintendent shall be maintained on the Project site and shall be present on the site at all times work is in progress. The superintendent shall be capable of reading and understanding the Drawings and Specifications and shall have full

authority to act in behalf of the Contractor. All directions and instructions given to the Superintendent shall be considered as given to the Contractor and shall be as binding as if given to the Contractor.

* + 1. Work shall be performed by workers experienced in their trade, and skilled and experienced for the class of work to which assigned. Any person, including supervisory personnel, who does not show and exhibit skill and proficiency in said work shall be removed by the Contractor and replaced by a competent and experienced worker.
    2. The Contractor shall, at all times, be responsible for the conduct and discipline of its employees and all Subcontractors and their employees. Disorderly, incompetent or intemperate persons, or persons who commit any crimes or trespass on public or private property in the vicinity of the Work must not be allowed to continue working upon the Project. Any superintendent, foreman or workman employed by the Contractor or a Subcontractor who unreasonably refuses or neglects to comply with the instructions of the Owner, Design Professional, or inspector, shall, at the written request of the Owner or Design Professional, be removed from the work site and shall not be allowed to work further on any portion of the Work without the approval of the Owner.
    3. The Contractor shall coordinate the Work by the various trades to provide uniform and symmetrical layout and spacing of the exposed components which will affect the finished design and appearance. Where spacing and related locations are not specifically shown on Drawings or where in doubt, the Contractor shall consult the Design Professional prior to installation of that part of the Work.
  1. **PERMITS, FEES, AND NOTICES**
     1. The Contractor shall purchase and secure all applicable permits and licenses and give all notices necessary and incidental to the prosecution of the Work. However, in accordance with Ark. Code Ann. §22-9-213, public works construction projects conducted by the Owner, a state agency, are exempt from permit fees or inspection requirements of county or municipal ordinances.
     2. When new construction under the Contract crosses highways, railroads, streets or utilities under the jurisdiction of the state, county, city, or other public agency, public utility, or private entity, the Contractor shall secure written permission from the proper authority before executing such new construction. A copy of this written permission shall be filed with the Owner before any work is completed. The Contractor shall furnish a release from the proper authority before final acceptance of the Work. Any bonds required for this Work shall be secured and paid for by the Contractor.
  2. **SAMPLES AND TESTS**
     1. The Contractor shall provide samples, materials, and equipment necessary or required for testing as outlined in the various sections of the Specifications or as directed by the Owner. The Contractor shall pay all costs for testing. Should materials, methods, or systems fail to meet specified standards, the Contractor shall pay all costs for additional testing as required by the Owner.
     2. All tests shall be made by a laboratory approved by the Owner.
  3. **LOCATION, GRADIENT, AND ALIGNMENT**
     1. Based upon the site information provided by the Owner, the Contractor shall develop and make detailed surveys necessary for construction including slope stakes, batter boards, and other working points, lines and elevations.
     2. The Contractor shall report any errors, inconsistencies, or omissions to the Design Professional as a request for information.
     3. The Contractor shall preserve benchmarks, reference points and stakes, and in the case of destruction thereof by the Contractor, shall be responsible for damage or mistakes resulting from unnecessary loss or disturbance.
  4. **LAND**
     1. Additional land and access thereto not shown on Drawings that may be required for temporary construction facilities or for storage of materials shall be provided by the Contractor at its expense with no liability to the Owner. The Contractor shall confine its equipment and storage of materials and the operation of its workers to those areas shown on the Drawings and described in the Specifications, and such additional areas which it may provide or secure as approved by the Owner.
     2. The Contractor shall not enter upon private property for any purpose without first obtaining permission.
     3. The Contractor shall be responsible for the preservation of, and prevention of damage or injury to, all trees, monuments, and other public property along and adjacent to the street and right-of-way. The Contractor shall prevent damage to pipes, conduits and other underground structures, and shall protect from disturbance or damage all monuments and property marks until an authorized agent has witnessed or otherwise referenced their location, and shall not remove monuments or property marks until directed.
  5. **LIMITS OF WORK**
     1. The Contractor shall conduct Work and operations so as to cause a minimum of inconvenience to the public. At any time when, in the opinion of the Owner or Design Professional, the Contractor is obstructing a larger portion of a road, street, or other public right-of-way than is necessary for the proper execution of the Work, the Design Professional may require the Contractor to finish the sections on which work is in progress before work is commenced on any new sections.
  6. **WARRANTY**
     1. The Contractor shall warrant that all Work, materials, and equipment furnished will be free from defects in design, materials, and workmanship and will give successful service under the conditions required. The warranty period for Work, materials, and equipment furnished by the Contractor shall be one year from the date of the written acceptance of the Work as stated in the Substantial Completion Form approved by the Contractor, Owner and the Design Professional, unless a longer period is agreed upon.
  7. **PATENTS AND ROYALTIES**
     1. If the Contractor is required or desires to use any design, device, material or process covered by letters, patent, or copyright, it shall provide for such use by suitable legal agreement. It is mutually understood and agreed that, without exception, the Contract Sum shall include all royalties or costs for use of patents, trademarks, and copyrights in any way involved in the Work. The Contractor and the surety shall defend, indemnify, and save harmless the Owner and all its officers, agents and employees from all suits, actions, or claims of any character, name and description brought for or on account of infringement or alleged infringement by reason of the use of any such patented design, device, material or process of any trademark or copyright used in connection with the Work agreed to be performed under this Contract, and shall indemnify the Owner for any cost, expense, or damage which it may be obliged to pay by reason of any action or actions, suit or suits which may be commenced against the Owner for any such infringement or alleged infringement at any time during the prosecution or after the completion of the Work contracted for herein. It is mutually agreed that the Owner may give written notice of any such suit to the Contractor, and thereafter, the Contractor shall attend to the defense of the same and save and

keep harmless the Owner from all expense, counsel fees, cost liabilities, disbursements, recoveries, judgments, and executions in any manner growing out of, pertaining to, or connected therewith.

* 1. **CLEANING UP**
     1. The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor’s tools, construction equipment, machinery, and surplus materials.
     2. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

**ARTICLE 4 -- ADMINISTRATION OF CONTRACT**

* 1. **DESIGN PROFESSIONAL AUTHORITY**
     1. The Design Professional will interpret the requirements of the Contract Documents and decide matters concerning performance thereunder on request of the Owner or Contractor.
     2. The Design Professional will provide administration of the Contract as described in the Contract Documents and will be the Owner’s representative. The Design Professional will decide any and all questions as to the acceptability of materials or equipment furnished, work performed, interpretation of the Drawings and Specifications, rate of progress of the Work, acceptability of the quality of workmanship provided, and other questions as to the fulfillment of the Contract by the Contractor.
     3. The Design Professional will prepare all change orders on the form specified by the Owner. The Design Professional may authorize minor changes in the Work not involving adjustment in the Contract Sum or extension of Contract Time and not inconsistent with the intent of the Contract Documents.
     4. The Design Professional and the Owner will have the right to enter the property or location on which the Work shall be constructed.
  2. **CLAIMS**
     1. Definition: A claim is a demand or assertion by one of the parties seeking adjustment, or interpretation of Contract terms, payment of money, extension of time, or other relief with respect to the terms of the Contract. The term includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims will be initiated by written notice. The responsibility to substantiate claims shall rest with the party making the claim.
     2. Claims of the Contractor or the Owner: Claims regarding the Work shall be referred initially to the Design Professional for a decision. The Design Professional will review claims, and 1) reject in whole or in part; 2) approve the claim; 3) suggest a compromise; 4) advise the parties that the Design Professional is unable to resolve the claim.
     3. Claims for Concealed or Unknown Conditions: If new and unforeseen items of work are discovered, which cannot be covered by any item or combination of items for which there is a Contract Sum, then the Contractor shall notify the Design Professional as quickly as reasonably possible and shall not continue working on the discovered new or unforeseen items without express written permission from the Design Professional. The Contractor shall complete such work and furnish such materials as may be required for the proper completion or construction of the work contemplated upon written Change Order from the Design Professional as approved by the Owner. Work shall be performed in accordance with the Contract Documents.
     4. Claims for Extensions of Time: The Contractor shall provide written notice to Design Professional within ten days stating the cause of the delay and request an extension of Contract Time. The Design Professional will act on the request in writing. The extension of time shall be for a period equivalent to the time lost by reasons indicated. No extension of time shall be effective until included in a Change Order approved by the Owner and Design Professional.
     5. Claims for Changes in the Work: Within ten calendar days after the receipt of instructions from the Owner directing changes in the Work, and before work related to such changes commences, the Contractor shall submit to the Design Professional, in writing, any claim for an extension of time or for an increase in the Contract Sum. The Contractor's claim shall include itemized estimate sheets showing labor and material, which shall be submitted to the Design Professional. Any order for changes in the Work shall specify an extension of the Contract Time, if any, and one of the following methods of payment:
        1. Unit prices or combinations of unit prices, which formed the basis of the original Contract.
        2. A lump sum fee based on the Contractor's estimate, approved by the Design Professional and accepted by the Owner.
        3. The actual cost of the Work plus an allowance for the General Contractor and Subcontractor consistent with the formula for pricing labor and materials as established in the Contract Documents.
     6. Claims for Additional Costs: In case of an emergency which threatens loss or injury of property or safety of life, the Contractor shall be allowed to act promptly without previous instructions from the Design Professional. The Contractor shall notify the Design Professional immediately thereafter. Any claim for compensation by the Contractor due to such extra work shall be promptly submitted, but in no case more than 7 calendar days following the event causing the emergency, to the Design Professional for consideration. The amount of reimbursement claimed by the Contractor on account of any emergency action shall be determined in the manner provided under these General Conditions. No agreement to pay costs for additional work shall be effective until included in a Change Order approved by the Owner, Contractor and the Design Professional.

**ARTICLE 5 -- SUBCONTRACTORS**

* 1. **ASSIGNMENT OF CONTRACT**
     1. Neither the Owner nor the Contractor shall have the right to sublet, sell, transfer, assign, or otherwise dispose of the Contract or any portion thereof without written consent of the other party. No assignment, transfer, or subletting, even with the proper consent, shall relieve the Contractor of its liabilities under this Contract. Should any Assignee or Subcontractor fail to perform its portion of the Work in a satisfactory manner the Owner may annul and terminate the Assignee's or Subcontractor's contract on the Project.
  2. **SUBCONTRACTS**
     1. The subcontracting of the whole or any part of the Work to be done under this Contract will not relieve the Contractor of its responsibility and obligations. All transactions of the Owner or Design Professional shall be with the Contractor. Subcontractors will be considered only in the capacity of employees or workmen and shall be subject to the same requirements as to character and competency.
     2. The Contractor shall discharge or otherwise remove from the project any Subcontractor that the Owner or the Design Professional has reasonably determined as incompetent or unfit.
     3. The Contractor may not change those Subcontractors listed on the job order proposal without the written approval of the Owner and Design Professional. The Contractor shall not be relieved of any liabilities under the Contract Documents, but shall be fully responsible for any Subcontractor or work by said Subcontractor where Subcontractor is employed by the Contractor to perform work under this Contract. Nothing contained in the Contract Documents shall create contractual relations between any Subcontractor and the Owner.
     4. No officer, agent, or employee of the Owner, including the Design Professional, shall have any power or authority to bind the Owner or incur any obligation in its behalf to any Subcontractor, material supplier or other person in any manner whatsoever.

**ARTICLE 6 - CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

* 1. **OTHER CONTRACTS**
     1. The Owner reserves the right to award other contracts or job orders in connection with a Project. The Contractor shall cooperate with the other contractors with regard to the storage of materials and equipment, access to the site, and execution of their work. It shall be the Contractor's responsibility to inspect the work of other contractors which will affect the work of this Contract and to report to the Owner irregularities which will not permit it to complete its work in a satisfactory manner or in the time allotted. Failure to so report shall constitute an acceptance of the work of other contractors.
  2. **DEPENDENCE ON OTHERS**
     1. If any part of the Contractor's work depends for proper execution or results upon the work of the Owner or any separate contractor, the Contractor shall, prior to proceeding with the work, promptly report to the Design Professional any apparent discrepancies or defects in such other work that render it suitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acceptance of the work.

**ARTICLE 7 -- CHANGES IN THE WORK**

* 1. **GENERAL**
     1. The Owner may, as the need arises, without invalidating the Contract, order changes in the Work in the form of additions, deletions, or modifications. Compensation to the Contractor for additional work or to the Owner for deductions in the Work and adjustments for the time of completion shall be adjusted at the time of ordering such change.
     2. Additional work shall be done as ordered in writing by the Owner. The order shall state the location, character, and amount of extra work. All such work shall be executed under the conditions of the Contract, subject to the same inspections and tests.
     3. The Design Professional and the Owner reserve and shall have the right to make changes in the Contract Documents and the character or quantity of the Work as may be considered necessary or desirable to complete fully and acceptably the proposed construction in a satisfactory manner.
  2. **CHANGE ORDERS**
     1. A Change Order is a written instrument, prepared by the Design Professional and approved by the Owner stating their agreement upon changes to the following, separately or in any combination thereof:
        1. Description and details of the Work.
        2. Amount of the adjustment in the Contract Sum.
        3. Extent of the adjustment in the Contract Time.
        4. Terms and conditions of the Contract Documents.
     2. Change Order requests by the Contractor shall be submitted in a complete itemized breakdown acceptable to the Owner and the Design Professional.
        1. Where unit prices are stated in the Contract, Contractor should submit an itemized breakdown showing each unit price and quantities of any changes in the Contract Sum. The value of all such additions and deductions shall then be computed as set forth in Paragraph 7.2.2.3.
        2. The Contractor shall present an itemized accounting together with appropriate supporting data for the purposes of considering additions or deductions to the Contract Sum. Supporting data shall include but is not limited to the following:
           1. Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker or workmen’s compensation insurance;
           2. Cost of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
           3. Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
           4. Costs of additional premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
           5. Additional costs of supervision and field office personnel directly attributable to the change.

The burden of proof of cost rests upon the Contractor. The Contractor agrees that Owner or Owner’s Representative shall have the right, at reasonable times, to inspect and audit the books and records of Contractor to verify the amount and propriety of an adjustment to the Contract Sum.

* + - 1. Requests for changes in the Contract Sum will be calculating by adding: (a) the net cost of materials and the materials markup set in Contractor’s proposal; (b) the amount of any sales or use tax on materials, and (c) the cost of labor at the rates set in Contractor’s job order proposal.
         1. Credit for work deleted shall be computed as outlined in 7.2.2.3.
  1. **PAYMENT FOR CHANGES IN THE WORK**
     1. All changes in the Work will be paid for in the manner indicated in Article 4, Paragraph 4.2, and the compensation thus provided shall be accepted by the Contractor as payment in full for the use of small tools, superintendent's services, premium on bond, and all other overhead expenses incurred in the prosecution of such work.
     2. The Owner shall not be deemed to have agreed to any costs for additional work, to have agreed to additional time for completion, or to have agreed to any other change in the terms and conditions of the Contract Documents until Owner, Design Professional and Contractor have executed a Change Order to this Contract.

**ARTICLE 8 -- TIME**

* 1. **PROGRESS**
     1. Time limits identified in the Contract Documents are of the essence of the Contract. The Contractor confirms that the Contract Time is a reasonable period of time for performing the Work.
  2. **HOLIDAYS**
     1. New Year's Day, Dr. Martin Luther King's Birthday, President’s Birthday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day and the day thereafter, Christmas Eve and Christmas Day will be considered as being legal holidays; no other days will be considered unless declared by the Governor of the State of Arkansas through an Executive Order or Proclamation. No Design Professional clarifications, observations, or State inspections will be provided on legal holidays, Saturdays and Sundays, and no work shall be performed on these days except in an emergency or with written approval in advance by the Design Professional and Owner.
  3. **DELAYS**
     1. Delays beyond the Contractor's control occasioned by an act or omission on the part of the Owner, strikes, fires, additions to the Work, delays by any separate contractor employed by the Owner, extremely abnormal weather conditions, or other delays beyond the Contractor’s control may, if agreed to by Change Order by the Contractor, Owner and Design Professional, entitle the Contractor to an extension of time in which to complete the Work. While such delays may be just cause for an extension of the Contract Time, the Contractor shall not have a claim for damages for any such cause or delay.

**ARTICLE 9 -- PAYMENTS AND COMPLETION**

* 1. **CONTRACT SUM**
     1. The Contractor shall accept the Contract Sum in full payment for furnishing all materials, equipment, labor, tools, and incidentals necessary to complete the Work and for performing all Work contemplated and embraced under the Contract; also for loss or damage arising from the nature of the Work, from the action of the elements or from any unforeseen difficulties which may be encountered during the prosecution of the Work until the final acceptance by the Design Professional and Owner and for all risks of every description connected with the prosecution of the Work, for all expenses incurred in consequence of the suspension or discontinuance of the Work as specified, for any infringement of patent, trademark, or copyright, and for completing the Work according to the Contract Documents. Neither the payment of any estimate nor of any retained percentage shall relieve the Contractor of any obligation to make good any defective work or material.
     2. No moneys payable under Contract or any part thereof, except the estimate for the first month or period, shall become due and payable if the Owner so elects until the Contractor shall satisfy the said Owner that it has fully settled or paid for all materials and equipment used in or on the Work and labor done in connection therewith, and the Owner, if it so elects, may pay any or all such bills wholly or in part and deduct the amount or amounts so paid from any monthly or final estimate excepting the first estimate.
     3. In the event the surety on any contract or payment bond given by the Contractor becomes insolvent, or is placed in the hands of a receiver, or has the right to do business in a state revoked as provided by law, the Owner may at its election withhold payment of any estimate filed or approved by the Design Professional until the Contractor shall give a good and sufficient bond in lieu of the bond so executed by such surety. Any and all subsequent bonds shall be filed with the Circuit Clerk of the County in which the Work is being performed.
  2. **SCHEDULE OF VALUES**
     1. The Contractor shall submit to the Design Professional a schedule of values for each part of the Work. The schedule shall be a complete breakdown of labor and materials for the various parts of the Work. The approved schedule of values shall be used as a basis for the monthly payments to the Contractor. In applying for the monthly payment, the Contractor shall show a detailed account of work accomplished in conformity with the schedule.
  3. **MEASUREMENT OF QUANTITIES**
  4. The Contractor shall be paid for all Work performed under the Contract based on Design Professional computations and the Contract Sum. This payment shall be full compensation for furnishing all supplies, materials, tools, equipment, transportation, and labor required to do the Work; for all loss or damage because of the nature of the Work, from the action of the elements or from any unforeseen obstruction or difficulty which may be encountered in the prosecution of the Work and for which payment is not specifically provided for all or any part of the Work, and for well and faithfully completing the Work in accordance with the Contract Documents.
  5. **REQUESTS FOR PAYMENT**
     1. The Contractor may submit periodically, but not more often than once each month, a Request for Payment for work completed. When unit prices are specified in the Contract Documents, the Request for Payment shall be based on the quantities completed.
     2. Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site, and if approved in advance by the Owner, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner and the Design Professional to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest including applicable insurance and transportation to the site for those materials and equipment stored off the site.
     3. The Contractor shall furnish the Design Professional all reasonable facilities and job tickets required for obtaining the necessary information relative to the progress and execution of the Work and the measurement of quantities. Each Request for Payment shall be computed from the work completed on all items listed in the approved schedule of values less retainage as provided in section 9.6.2 and less previous payments to the Contractor on the Contract.
  6. **PERIODIC ESTIMATES FOR PAYMENT**
     1. Unless otherwise stated in the Specifications or Supplementary Conditions, the Owner shall cause the Design Professional to prepare an Estimate for Payment to the Contractor each month. The Design Professional will make the estimate for the materials complete in place and the amount of work performed in accordance with the Contract between the twenty-fifth day of the month and the fifth day of the succeeding month.
     2. From the total of the amount estimated to be paid, an amount equal to 5 percent of the total completed shall be retained. All sums withheld by the Owner and requested in a Final Pay Request prepared by the Contractor will be paid to the Contractor within 30 days after the Contract has been completed and the work approved by the Owner and the Design Professional. No retainage will be withheld on that amount of the progress payment pertaining to the cost of materials stored at the site or within a bonded warehouse.
  7. **PAYMENT FOR INCREASED OR DECREASED QUANTITIES**
     1. When alterations in the quantities of work not requiring Contract modifications are ordered and performed, the Contractor shall accept payment in full at the Contract Sum, for the actual quantities of work accomplished. No allowance will be made for anticipated profits. Increased or decreased work involving Contract modifications shall be paid for as stipulated in such Contract modifications
  8. **DESIGN PROFESSIONAL'S ACTION ON A REQUEST FOR PAYMENT** 
     1. The Owner shall cause the Design Professional to, within five working days plus time required for transmittal from one party to another, act on a Request for Payment by the Contractor in one of the following:
        1. Approve the Request for Payment as submitted by the Contractor, and transmit same to the Owner.
        2. Approve an adjusted amount as the Design Professional will decide is due the Contractor informing the Contractor in writing of the reason for the adjusted amount, and transmit same to the Owner.
        3. Withhold the Request for Payment submitted by the Contractor informing the Contractor and the Owner in writing of the reason for withholding the request.
  9. **OWNER'S ACTION ON A REQUEST FOR PAYMENT** (See also 9.10)
     1. The Owner will, within ten working days plus transmittal time between the various state agencies involved, act on a Request for Payment after approval by the Design Professional by one of the following:
        1. Approve the Request for Payment as approved by the Design Professional, and forward the Pay Request to the Owner’s Contract Administrator in Finance for review and approval prior to submission to Owner’s Accounts Payable for payment.
        2. Approve payment of an adjusted amount as the Owner will decide is due the Contractor, informing the Contractor and the Design Professional in writing of the reason for the adjusted amount of payment.
        3. Withhold the Request for Payment informing the Contractor and the Design Professional in writing of the reason for withholding the payment.
  10. **WITHHOLDING PAYMENT**
      1. The Design Professional or the Owner may withhold payment for contested issues, including but not limited to, defective work on the project; evidence indicating the probable filing of claims by other parties against the Contractor related to the project; damage caused to another contractor; reasonable evidence that Work cannot be completed for the unpaid balance of the Contract Sum or within Contract Time or failure of the Contractor to make payments on materials, equipment or labor to subcontractors.
  11. **PAYMENT FOR UNCORRECTED WORK**
      1. Should the Design Professional direct the Contractor not to correct work that has been damaged or that was not performed in accordance with the Contract Documents, an equitable deduction from the Contract Sum shall be made to compensate the Owner for the uncorrected work. The Design Professional shall determine the amount of the equitable deduction.
  12. **PAYMENT FOR REJECTED MATERIALS AND WORK**
      1. The removal of rejected work and materials and the re-execution of acceptable work by the Contractor shall be at the expense of the Contractor. The Contractor shall pay the cost of replacing the work of other contractors destroyed or damaged by the removal of the rejected work or materials and the subsequent replacement with acceptable work.
  13. **DATE OF SUBSTANTIAL COMPLETION**
      1. A Certificate of Substantial Completion, which shall establish the Date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to work, and insurance and shall fix the time within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion, unless another timeframe is stated in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall not become effective until approved by the Owner and the Design Professional.
  14. **FINAL COMPLETION AND PAYMENT BY OWNER**
      1. The Contractor shall furnish a letter from the Design Professional attached to the Contractor's final estimate, which shall include all retainage withheld, certifying that the Design Professional has received and approved all guarantees, bonds, maintenance and operation manuals, air balance data, shop drawings, catalog data, and record documents specified in the Contract Documents.
      2. Before final payment, the Contractor shall furnish to the Design Professional executed copies of the Release of Claims and Consent of the Performance and Payment Bond Surety for Final Payment. Items listed in this Section Nine (9) shall be submitted with and at the same time as the final estimate to the Design Professional and shall be promptly delivered by the Design Professional to the Owner. No final payment or release of retained amounts shall be made without complete compliance with this Section Nine (9), and approval by the Owner of the Final Pay Request, which shall include payment of all retained amounts,
      3. Any claim by the Contractor to the Owner for interest on a delinquent final payment shall only be made pursuant to Ark. Code Ann. § 22-9-205.
  15. **PARTIAL OCCUPANCY OR USE**
      1. The Owner may occupy or use any completed or partially completed portion of the Work provided such use or occupancy is consented to by the insurer and authorized. The Contractor will prepare a list of items to be completed or corrected before partial acceptance. Upon receipt of the Contractor’s list, the Design Professional will make an inspection to determine whether the Work or portion thereof is substantially complete. No portion of the Work shall be considered substantially complete unless described in a Certificate of Substantial Completion Form approved by the Contractor, Owner and the Design Professional.
      2. The Design Professional will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to Work and insurance, identify work items to be corrected or completed by the contractor, and fix the time within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion, unless another timeframe is stated in the Certificate of Substantial Completion. No retained amounts shall be paid until the Contractor, Design Professional and the Owner approve a Certificate of Substantial Completion for all of the Work and all other conditions for final acceptance of this Work are met to the satisfaction of the Owner.
      3. In instances where some of the Work is “sectioned” out and substantially completed, the retained amounts shall not be paid until the final Certificate of Substantial Completion of the entire Work is approved by the Contractor, Design Professional, and the Owner and all other conditions of this Section Nine (9) are met by the Contractor.
  16. **FINAL INSPECTION**
      1. Tests, inspections, and approvals of portions of the Work required by the Contract Documents, laws, ordinances, or public authority having jurisdiction shall be made at the appropriate time. The Contractor shall give the Design Professional timely notice of when and where tests and inspections shall be made so that the Design Professional may be present. The Contractor shall make arrangements for testing and inspection with an independent testing laboratory.
      2. The Contractor shall ensure that the final completed Work is in accordance with the Contract Documents. Required certificates of testing and inspection shall be secured by the Contractor and delivered to the Design Professional, unless otherwise required by the Contract Documents.
  17. **ASSIGNMENT OF WARRANTIES**
      1. All warranties of materials and workmanship running in favor of the Contractor shall be transferred and assigned to the Owner on completion of the Work and at such time as the Contractor receives final payment.
      2. In case of warranties covering work performed by subcontractors, such warranties shall be addressed to and in favor of the Owner. The Contractor shall be responsible for delivery of such warranties to the Owner prior to final acceptance of the work.
      3. Delivery of guarantees or warranties shall not relieve the Contractor from any obligation assumed under any provision of the Contract. All warranties shall be for one year from the date of Substantial Completion of the Project, unless extended otherwise.
  18. **ACCEPTANCE AND FINAL PAYMENT**
      1. Upon receipt of written notice that the Work is ready for final inspection, the Design Professional together with the Owner will conduct such inspection and when the Design Professional determines the work is acceptable to the Design Professional and the Owner, the Design Professional shall certify acceptance to the Owner. Final Payment shall be the Contract Sum plus approved Change Order additions less approved Change Order deductions and less previous payments made. The Contractor shall furnish evidence that it has fully paid all debts for labor, materials, and equipment incurred in connection with the Work. The Owner, upon approval by the Design Professional of all documentation to be provided by the contractor in accordance with this Section 9, and approval by the Design Professional, Contractor and Owner of the Certificate of Substantial Completion will accept the Work and release the Contractor, except as to the conditions of the Performance and Maintenance Bond, any legal rights of the Owner, required guarantees and correction of faulty work after Final Payment, and shall authorize payment of the Contractor's final Request for Payment. The Contractor must allow sufficient time between the time of completion of the work and approval of the final Request for Payment for the Design Professional to assemble and check the necessary data.
      2. Acceptance of final payment by the Contractor shall constitute waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final Request for Payment.

**ARTICLE 10 -- PROTECTION OF PERSONS AND PROPERTY**

* 1. **GENERAL**
     1. The Contractor shall at all times exercise precaution for the safety of employees on the Project and of the public, and shall comply with all applicable provisions of federal, state and municipal safety laws and applicable building and construction codes. The Contractor shall provide and maintain passageways, guard fences, lights, and other facilities for protection required by all applicable laws. All machinery, equipment, and other physical hazards shall be guarded in accordance with all federal, state or municipal laws or regulations.
     2. The Work, from commencement to completion, and until written acceptance by the Design Professional and the Owner, or to such earlier date or dates when the Owner may take possession and control in accordance with Section Nine (9) of these General Conditions, shall be under the charge and control of the Contractor and during such period of control by the Contractor all risks in connection therewith shall be borne by the Contractor. The Contractor shall make good and fully repair all damages to the Project by reason of the Contractor’s fault, and make good on all injuries to persons caused by any casualty or cause by reason of the Contractor's fault. The Contractor shall adequately protect adjacent Property as provided by law and the Contract Documents. The Contractor shall hold the Owner harmless from any and all claims for injuries to persons or for damage to property during the control by the Contractor of the Project or any part thereof.
     3. The Contractor shall at all times so conduct the Work as to ensure the least possible obstruction to traffic, to the general public, and the residents in the vicinity of the Work, and to ensure the protection of persons and property. No road, street, or highway shall be closed to the public except with the permission of the Owner and proper governmental authority. Fire hydrants on or adjacent to the Work shall be kept accessible to firefighting equipment at all times. The local fire department shall be notified of the temporary closing of any street.

**ARTICLE 11 -- INSURANCE AND BONDS**

* 1. **CONTRACTOR’S LIABILITY INSURANCE**
     1. The Contractor shall secure and maintain in force insurance specified by the Contract Documents, from an insurance company authorized to write the prescribed insurance in the jurisdiction where the Project is located. Such insurance will be in form and amount as required to protect the Contractor, its Subcontractors, and the Owner from all claims for bodily injury, death, or property damage that may arise from operations under this Contract. The Contractor shall not commence work under this Contract until it has obtained all the insurance required, has filed the Certificate of Insurance with the Owner, and the certificate has been approved by the Owner. Each insurance policy shall contain a clause providing that it shall not be canceled by the insurance company without advance written notice of cancellation to the Owner, and shall name the Owner as an additional insured.
     2. Workman's Compensation and Employer's Liability Insurance in statutory limits shall be secured and maintained as required by the laws of the State of Arkansas. This insurance shall cover all employees who have performed any of the obligations assumed by the Contractor under the Contract Documents including Employer's Liability Insurance. This insurance shall protect the Contractor against any and all claims resulting from injuries, sickness, disease, or death to employees engaged in work under this Contract.
     3. Comprehensive General Liability Insurance, including automobile and truck liability. Prior to blasting, the Contractor shall furnish a Certificate of Insurance, which shall certify that damage caused by blasting is within the coverage of his Comprehensive General Liability Insurance to the full limits

thereof. Hired and non-owned automobile insurance for automobiles and trucks shall include hired and non-owned automobile coverage.

* + 1. Contractor's Protective Liability Insurance: The Contractor shall indemnify and save harmless the Owner from and against all losses and all suits, claims, demands, judgments, actions, and payments of every description and nature brought or recovered against it by reason of any omission or act of the Contractor, its agents, or employees in the execution of the Work or in the guarding of the Work. The Contractor shall secure and maintain protective liability insurance in the name of the Owner and the Contractor covering them from contingent liability under this Contract.
    2. Builder's Risk and Fire Insurance: The Contractor shall procure and maintain for each Project Builder's Risk Insurance including fire, lightning, extended coverage, vandalism, and property theft on the insurable portion of the Project on a 100 percent completed value basis against damage to the equipment, structures, or material. The Owner and the Contractor, as their interests may appear, shall be named as the Insured.
    3. Proof of Insurance: The Contractor shall maintain the insurance coverages required by the Contract Documents throughout the term of the work to performed under a job order, and shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of policies. Such certificates shall also contain substantially the following statement: "The insurance covered by this certificate will not be canceled, or materially altered except after 15 days prior written notice has been received by the Owner."
  1. **BONDS**
     1. Performance and Payment Bond: The Contractor shall, at the time of accepting a job order, furnish a bond covering faithful performance of the Contract and the payment of obligations, unless the job order is for a sum less than $20,000.00. The Performance and Payment bonds, and any amendments thereto, shall be filed with the circuit clerk office in the County Courthouse of the county where the work shall be performed. For any increases to the contract amount, scope of work, time for completion or other terms relating to the Change Order, the Contractor may be required by Owner to furnish an amendment to the Bond agreement in which the Surety has agreed to amend the Performance and Payment Bond to reflect such revisions.

**ARTICLE 12 -- UNCOVERING AND CORRECTION OF WORK**

* 1. **EXAMINATION OF COMPLETED WORK**
     1. If any portion of the Work should be covered contrary to the request of the Owner, Design Professional, or Inspector or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Owner, Design Professional, or Inspector, be uncovered for his observation and replaced at the Contractor's expense.
  2. **DEFECTIVE WORK**
     1. Defective work, whether through the use of defective materials, the result of poor workmanship, or any other cause, shall be removed within ten days after notice is given by the Owner or Design Professional. The Work and affected materials and equipment shall be removed and replaced as necessary to comply with the Contract Documents without additional cost to the Owner. The fact that the defective work may have been previously overlooked by the Design Professional shall not constitute acceptance.
  3. **REJECTED MATERIALS**
     1. Materials which do not conform to the requirements of the Contract Documents, are not equal to samples approved by the Design Professional, or are in any way unsuited or unsatisfactory for the purpose for which intended, shall be rejected. Defective materials shall be removed within ten days after notice by the Design Professional. The materials shall be replaced with new materials as necessary to comply with the Contract Documents at no additional cost to the Owner. The fact that the defective material may have been previously overlooked by the Design Professional shall not constitute acceptance.
     2. Should the Contractor fail to remove and replace rejected material within the specified ten days after written notice to do so, the Owner may remove and replace the material and deduct the cost from the Contract Sum.
  4. **CORRECTION OF FAULTY WORK AFTER FINAL PAYMENT**
     1. The approval of the final Contractor’s Request for Payment by the Design Professional and the making of the final payment by the Owner to the Contractor shall not relieve the Contractor of responsibility to correct faulty materials or workmanship promptly after receipt of written notice from the Owner. The Owner shall give such notice of faulty materials or workmanship promptly, after discovery of the condition. If the Contractor fails to correct the defects, promptly, after receipt of written notice from Owner, the Owner may have the work corrected at the Contractor’s expense.

**ARTICLE 13 -- MISCELLANEOUS PROVISIONS**

* 1. **GOVERNING LAW**
     1. The Contract shall be governed by the laws of the State Of Arkansas. Venue for any administrative action or judicial proceedings shall be Pulaski County, Arkansas. Nothing in these General Conditions shall be construed to waive the sovereign immunity of the System or any entities thereof.
     2. The Contractor shall give all notices and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the conduct of the Work. The Contractor shall indemnify and save harmless the Owner against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree whether by the Contractor, its employees, or its subcontractors.
     3. The Contractor shall comply with the laws of the local, state, and federal government regarding wages and hours of labor.
  2. **WRITTEN NOTICE**
     1. Notice will be considered served when delivered in person or sent by certified mail to the individual, firm, or corporation to the last business known address.
     2. The written Notice to Proceed with the Work shall be issued by the Design Professional after issuance of a job order by the Owner. The Contractor shall begin and prosecute the Work and without interruption in a manner that will complete the Work within the time limits stated in the job order or notice to proceed.
  3. **TESTS AND INSPECTIONS**
     1. All materials and each and every part of the Work shall be subject at all times to inspection by the Owner, Design Professional, or the Inspector. The Contractor shall be held to the intent of the Contract Documents in regard to quality of materials, equipment, and workmanship, and the diligent execution of the Contract. The inspection may extend to and include plant, shop, or factory inspection of material furnished. The Contractor agrees to allow Federal or State inspectors, acting in an official capacity, to have access to the job site.
     2. The Owner, Design Professional, and Inspectors shall be allowed access to all parts of the Work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection for ascertaining if the Work as performed is in accordance with the requirements and the Contract Documents.
     3. Inspectors shall have authority to suspend any work only in a life threatening situation, subject to the final decision of the Owner or Design Professional. Inspectors shall have no authority to permit deviations, or to relax provisions of the Contract Documents without the written permission or instruction of the Owner and the Design Professional, or delay the Contractor by failing to work with reasonable promptness.
  4. **VERBAL AGREEMENTS**
     1. No verbal objection, order, claim, or notice by any of the parties shall affect or modify any of the terms or obligations contained in the Contract Documents. None of the terms or provisions of the Contract Documents shall be considered waived or modified unless the waiver or modification thereof is in writing, and agreed upon by the parties in the form of a Change Order approved by the Owner, Design Professional and the Contractor and no evidence of any other waiver or modification shall be introduced in any proceeding.

**ARTICLE 14 -- TERMINATION OR SUSPENSION OF THE CONTRACT**

* 1. **SUSPENSION OF WORK**
     1. The Work or any portion thereof may be suspended at any time by the Owner provided that the Owner gives the Contractor written notice of the suspension. The notice shall set forth the date on which the Work is to be suspended and the date on which the Work is to be resumed. The Contractor shall resume the work upon written notice from the Owner within ten days after the date set forth in the notice of suspension.
     2. The Owner will have the authority to suspend the Work, wholly or in part, for such period of time as deemed necessary. The suspension may be due to unsuitable weather, or such other conditions as are considered unfavorable for the proper prosecution of the work, or the failure on the part of the Contractor to fulfill the provisions of the Contract. Failure to supply material, equipment, or workmanship meeting the requirements of the Contract Documents shall be just cause for suspension of the Work. The Contractor shall not have the right to suspend operations without the Design Professional or Owner's permission.
  2. **TERMINATION BY OWNER FOR CAUSE**
     1. The Owner will have the right to terminate the Contract or a job order upon giving ten days written notice of the termination to the Contractor and the Contractor’s surety, in the event of any default by the Contractor and upon written notice from the Design Professional to the Owner that sufficient cause exists to justify such action. In the event of termination, the Owner may take possession of the Work and of all materials, tools, and equipment and construction equipment and machinery thereon and may finish the work by whatever method it may select. If the Owner does not elect to use its own forces, the surety shall furnish a competent licensed contractor within 10 working days from the written notice to the surety.
     2. It shall be considered a default by the Contractor whenever it shall become insolvent; declare bankruptcy assigns assets for the benefit of its creditors; fails to provide qualified superintendence, proper materials, competent subcontractors, competent workmen; fails to make prompt payments for labor, materials, or equipment; disregards or violates provisions of the Contract Documents; disregards the Owner’s or the Design Professional’s instructions; fails to prosecute the Work according to the approved schedule of completion, including extensions thereof as provided for by approved Change Orders; and fails to start the Work on the date established in the Notice to Proceed.

**ARTICLE 15 – ALTERNATIVE DISPUTE RESOLUTION**

* 1. **MEDIATION**
     1. In the event of any dispute regarding the Contractor, Design Professional or Owner (hereinafter referred to as party/parties for this section only) under this Agreement, the party asserting a dispute shall notify the appropriate Owner’s designated Administrator in writing. The Owner’s Administrator or designee will then attempt to negotiate a settlement of the dispute between the parties.
     2. If the Owner’s Administrator, or designee, determines he or she is unable to negotiate a settlement between the parties, the parties may participate in mediation. A request for mediation must be made in writing to the Owner and the parties shall agree upon the location of the mediation. A mediator mutually agreed upon by the parties shall conduct the mediation process. Mediation shall be voluntary, non-binding and all proceedings in connection with such shall be subject to this Agreement and applicable provisions of Arkansas law. Any mediation fees shall be borne equally between the parties. The parties shall coordinate mediation and the Owner shall notify the University of Arkansas System Office of any mediation prior to it taking place. The Owner’s Administrator or designee may view any and all mediation proceedings. Any settlements arising out of the mediation process must be approved by the University of Arkansas System Office.
     3. Notwithstanding anything to the contrary contained herein, if any dispute arises between the Parties, whether or not it requires at any time the use of dispute resolution procedures described above, in no event, nor for any reason, shall the Contractor or the Design Professional interrupt the provision of services or performance to the Owner, or perform any other action that prevents, slows down, or reduces, in any way, the provisions of the Agreement unless: (a) authority to do so is granted by the Owner or (b) the Agreement has been terminated by the Owner.

**END OF DOCUMENT**

**SECTION 00800 - SUPPLEMENTARY CONDITIONS MODIFICATIONS TO GENERAL CONDITIONS**

**ARTICLE 3 – CONTRACTOR**

1. Paragraph 3.2 REVIEW OF FIELD CONDITIONS Add the following subparagraphs:
   * 1. The Contractor acknowledges by submission of its Job Order price proposal that it has satisfied itself as to the nature and location of the Work, the general and local conditions, particularly those bearing upon availability of transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads, and uncertainties of weather, or similar physical conditions at the site, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during the prosecution of the work and all other matters which can in any way affect the Work or the cost thereof under this contract.
     2. The Contractor further acknowledges that it is satisfied as to the character, quality, and quantity of materials to be encountered from inspecting the site. Any failure by the Contractor to be acquainted with all the available information will not relieve the Contractor from responsibility for properly estimating the difficulty or cost of successfully performing the Work.
     3. In the event subsurface or latent physical conditions are found materially different from those indicated in the Contract Documents, and differing materially from those ordinarily encountered in the project area and generally recognized as inhering in the character of work covered in these Contract Documents, the Contractor shall promptly, and before such conditions are disturbed, notify the Owner in writing of such changed conditions.
     4. The Owner will investigate such conditions promptly and following this investigation, the Contractor shall proceed with the work, unless otherwise instructed.

**ARTICLE 10 – PROTECTION OF PERSONS AND PROPERTY**

* 1. GENERAL

Add the following subparagraphs:

* + 1. Safety provisions shall conform to the Federal and State Department of Labor Occupational Safety Health Act (OSHA), and all other applicable federal, state, county, and local laws, ordinances, codes, the requirements set forth herein, and any regulations that may be specified in other parts of these Contract Documents. Where any of these are in conflict, the more stringent requirements shall be followed. The Contractor's failure to be thoroughly familiar with the aforementioned safety provisions shall not relieve him from compliance with the obligations and penalties set forth therein.
    2. The Contractor shall at all times provide proper facilities for safe access to the Work by authorized government officials.
    3. The Contractor shall develop and maintain for the duration of this Contract, a safety program that will effectively incorporate and implement all required safety provisions. The

Contractor shall appoint an employee who is qualified and authorized to supervise and enforce compliance with the safety program.

**ARTICLE 11 - INSURANCE AND BONDS**

1. Subparagraph 11.1.1, add the following sentence:

Unless provided otherwise in a job order, the amount of such insurance shall be not less than the following or any limits required by law.

1. Subparagraph 11.1.2, add the following clause:

|  |  |  |
| --- | --- | --- |
| 11.1.2.2 | Worker's Compensation: |  |
| A. | State: | Statutory |
| B. | Applicable Federal | Statutory |
| C. | Employer's Liability | $ 100,000.00 per Accident  $ 500,000.00 Disease, Policy Limit  $ 100,000.00 Disease, each Employee |

1. Subparagraph 11.1.3, add the following clause:

11.1.3.2 Commercial General Liability

Primary non-contributory: $ 1,000,000.00

Per Project Aggregate:

Commercial Automobile Liability

(including owned, non-owned, and hired vehicles) $ 1,000,000.00

Combined Single Limit

Umbrella or Excess Liability $ 2,000,000.00

1. Subparagraph 11.1.4, add the following clause:

Owner’s and Contractor’s Protection Liability $ 1,000,000.00

Combined Single Limit

1. Subparagraph 11.1.5., add the following:

“Each Job Order Contract shall stipulate whether Builder’s Risk Insurance is required.”

**ARTICLE 13 – MISCELLANEOUS PROVISIONS**

* + 1. PROTECTION OF THE ENVIRONMENT
       1. The Contractor shall maintain all work areas within and outside the project boundaries free from environmental pollution, including releases of regulated or hazardous materials, that would be in violation to any federal, state, or local regulations.
       2. The Contractor shall comply in all ways with the Arkansas Department of Environmental Quality (ADEQ) Requirements for disturbed areas. This especially pertains to control of erosion/sediment from the construction areas.
       3. Trash burning will not be permitted on the construction site.

**END OF DOCUMENT**