

GENERAL TERMS AND CONDITIONS FOR CONSULTANTS

ARTICLE 1 SCOPE OF WORK

1.1 GENERAL REQUIREMENTS

1.1.1 The **CONSULTANT** shall review the program and budget as furnished by the Owner to ascertain the requirements of the Project, and shall review the understanding of such requirements with the Owner.

1.1.2 The **CONSULTANT** shall review with the Owner alternative approaches to design and construction of the Project.

1.1.3 The **CONSULTANT** shall strive to insure that all Designs, Construction Documents and submittals are in accordance with applicable Codes and Regulations. For those portions of the Design that are not in accordance with such codes, the **CONSULTANT** shall secure for the Owner, in writing, authorization from the jurisdictional authority to vary from the applicable Codes and Regulations. Copies of any such variance shall be forwarded to the Owner as variances are obtained. All Design reviews between **CONSULTANT** and authorities for Code and Regulation compliance shall be fully documented by the **CONSULTANT**, listing all items discussed, interpretations rendered, and variances sought and/or authorized.

1.1.4 The **CONSULTANT** shall provide a list of all facets of Work provided by other consultants under the **CONSULTANT**'s direction (e.g. Electrical Design, Curtain Wall Design, Structural Design). Such list shall also include the name of the firm doing each facet of the Design.

1.1.5 The **CONSULTANT**'s selection of his Design Team members shall be approved by the Owner. These team members shall not be changed without the written consent of the Owner so long as they remain in the employ of the **CONSULTANT**. The same applies to design firms contracted with by **CONSULTANT**.

1.1.6 The **CONSULTANT** shall perform Designated Services as expeditiously as is consistent with professional skill and care and the orderly progress of Work. The **CONSULTANT** shall submit for the Owner's approval a time schedule for the performance of the **CONSULTANT**'s services which shall be adjusted as required as the Project proceeds, and shall include allowances for periods of time required for the Owner's review and approval of submission, other necessary Owner actions, and for approvals of authorities having jurisdiction over the Project. This time schedule, when approved by the Owner, shall be followed by the **CONSULTANT**, and by all design team members hired or coordinated by the **CONSULTANT**, except for delays not caused by the **CONSULTANT**.

1.1.7 The **CONSULTANT** shall forward one reproducible copy (less registration seal) of all drawings issued for any purpose to the Corporate D.E.C. Technical Services Manager, 2405 Grand, Suite 200, Kansas City, MO 64108.

1.1.8 The **CONSULTANT** (or his subconsultant) shall insure that all structural design calculations are prepared and sealed by a Professional Engineer, registered in the state of the project's location.

1.1.9 The **CONSULTANT** (or his subconsultant) shall design all structures for appropriate seismic zone requirements. Non-structural items which may be damaged due to an earthquake events, posing risk to people or significant monetary loss, shall be designed for seismic loads. Examples include masonry walls, suspended ceilings, mechanical equipment, bookcases, parapets, hanging ceiling loads, piping, etc.

1.1.10 The **CONSULTANT** (or his subconsultant) shall review any new floor penetrations of existing structures for structural capacity. He shall check existing slab penetrations in area of new openings to more accurately evaluate new live load capacity of slab.

1.1.11 The **CONSULTANT** (or his subconsultant) shall evaluate all wind loads on corners, at eaves of building, and on roof perimeters per requirements of UBC or other prevailing code. The skin of the structure, the roof attachment requirements, and the fastening of edge roof nailer will be designed to meet these special wind conditions.

1.1.12 The **CONSULTANT** (or his subconsultant) shall work closely with the structural peer reviewer on projects the Owner chooses for reviewed. This shall include an initial meeting to establish all design loadings, design assumptions, and procedural methods to arrive at final design. The structural engineer must meet with or provide peer reviewer with design development and 30% and 90% structural design drawings with calculations for reviewer's comments. Any disagreements must be worked out early in the design process and agreed to by both parties.

1.1.13 The **CONSULTANT** (or his subconsultant) shall provide performance specifications requiring safe side slope conditions of excavations, temporary shoring, and underpinning. These items are to be designed, or approved, by a professional engineer hired by contractor or to be part of a pre-engineered system. Field inspections by Engineer should verify design intent.

1.1.14 The **CONSULTANT** (or his subconsultant) shall provide inspection \review of concrete formwork and associated shoring to verify design intent of structure to accept contractor's loads. The forming and necessary shoring procedure shall be specified to be designed or approved by professional engineer or to be part of a pre-engineered system.

1.1.15 The **CONSULTANT** (or his subconsultant) shall design roof support steel such that water always flows toward drains to prevent ponding. The surface shall be smooth, without protrusions, to insure no interference with deck placement.

1.1.16 The **CONSULTANT** (or his subconsultant) shall review and approve all steel shop drawings. Such approval shall constitute the Structural Engineer's acceptance of all responsibility for the design adequacy of any connections designed by the fabricator as a part of his preparation of these shop drawings.

1.1.17 The **CONSULTANT** (or his subconsultant) shall provide the following:

- a) Detailed stamped drawings and calculations of structural items pertaining to his design.
- b) Approval of all structural shop drawings provided by the contractor that relate to his structural design and the acceptance of responsibility for the design adequacy of these shop drawings as they relate to his structural design.
- c) Specifications for special inspection and testing that meet the requirements of the governing building code having jurisdiction over the project.
- d) The Engineer shall provide special inspection services upon request of the Owner. This shall include the preparation and submittal of inspection reports to building department officials when required. The Structural Engineer shall review the special inspection reports and provide direction in resolving deficiencies noted on the reports. Terms and fees to be negotiated upon at appropriate time of the project.

1.1.18 The **CONSULTANT** (or his subconsultant) shall ensure that all nondestructive testing personnel associated with the consultant shall be certified in accordance with SNTC IA level II requirements

1.1.19 Design shall include evaluation of floor vibrations and limit their magnitude to a level acceptable to Owner

1.2 DESIGN DEVELOPMENT PHASE

1.2.1 The **CONSULTANT** shall provide a preliminary evaluation of the program and the Project budget requirements, each in terms of the other, subject to the limitations set forth in Subparagraph 2.1. The Project budget shall include costs of construction, professional fees, furnishings, fixtures, equipment, and other costs associated with the Project as defined in Article 1.

1.2.2 Based on the mutually agreed upon program and Project budget requirements, the **CONSULTANT** shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

1.2.3 Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program or Project budget, the **CONSULTANT** shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the entire Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. The maximum paper size for all drawings shall be 30" by 42". The **CONSULTANT** shall submit to the Owner reproducible copies of all Schematic Design and Design Development Documents.

1.3 CONSTRUCTION DOCUMENTS PHASE

1.3.1 a. Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the Project budget authorized by the Owner, the **CONSULTANT** shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project. The maximum paper size for all drawings shall be 30" by 42". The **CONSULTANT** shall submit to the Owner reproducible copies of all Construction Documents. The **CONSULTANT** will redo, at no cost to the Owner, any drawings that do not meet generally accepted standards of performance.

1.3.1 b. The **CONSULTANT** shall furnish to the Owner a copy of all of the mechanical and electrical calculations bound in a suitable binder and presented in a clear, legible form. This shall include the Engineer's "Description of Operation" of the project detailing the design intent of the Mechanical, Electrical, Fire Protection, Security and Life Safety Systems.

1.3.2 The **CONSULTANT**, at Owner's direction, shall assist the Owner in the preparation of the necessary information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and the Contractor.

1.3.3 The **CONSULTANT** shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the project.

1.3.4 The **CONSULTANT**, following the Owner's approval of the Construction Documents, shall assist the Owner as required in obtaining bids or negotiated proposals, and assist in awarding and preparing contracts for construction or purchases. Such assistance shall include, but is not limited to, conducting pre-bid conferences with interested Contractors, preparing addenda, and otherwise responding to questions regarding the Construction Documents.

1.3.5 In the event that the low bid exceeds the budget agreed upon 1.3.1a, the **CONSULTANT** shall, at no cost to the Owner, revise the design and Construction Documents as necessary to bring the project cost within the budgeted amount.

1.4 CONSTRUCTION PHASE

1.4.1 The Construction Phase will commence with the award of the Contract for Construction and will terminate when final payment to the Contractor is paid and a certificate of payment is received by the Owner, or in the absence of a final Certificate for Payment or of such due date, sixty days after the Date of Substantial Completion of Work, whichever occurs first.

1.4.2 The **CONSULTANT** shall perform those duties described in Construction Documents which are part of the Agreement between Owner and Contractor.

1.4.3 The **CONSULTANT** shall be a representative of the Owner during the Construction Phase, and shall advise and consult with the Owner. The **CONSULTANT** shall have authority to act on behalf of the Owner only to the extent provided in the Construction Documents.

1.4.4 The **CONSULTANT** shall visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Construction Documents. However, the **CONSULTANT** shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of Work. On the basis of such on-site observations as an **CONSULTANT**, the **CONSULTANT** shall keep the Owner informed of the progress and quality of the Work, and shall guard the Owner against defects and deficiencies in the Work of the Contractor.

1.4.5 The **CONSULTANT** shall review the special inspection reports and provide direction in resolving deficiencies or discrepancies noted in the reports.

1.4.6 The **CONSULTANT** shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, for the acts or omissions of the Contractor, Subcontractors, or any other persons performing any of the Work, or for the failure of any of them to carry out the Work in accordance with the Construction Documents.

1.4.7 The **CONSULTANT** shall at all times have access to the Work wherever it is in preparation or progress.

1.4.8 The **CONSULTANT** shall be the interpreter of the requirements of the Construction Documents and the judge of the performance thereunder. The **CONSULTANT** shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the Contractor, and shall render written decisions, within a reasonable time, on all claims, disputes and other matters in question between the Owner and the Contractor relating to the execution or progress of the Work or the interpretation of the Construction Documents.

1.4.9 Interpretations and decisions of the **CONSULTANT** shall be consistent with the intent of and reasonably inferable from the Construction Documents and shall be in written or graphic form. The **CONSULTANT**'s decisions in matters relating to artistic effect shall be final if consistent with the intent of the Construction Documents.

1.4.10 The **CONSULTANT** shall have authority to reject Work which does not conform to the Construction Documents. Whenever, in the **CONSULTANT**'s reasonable opinion, it is necessary or advisable for the implementation of the intent of the Construction Documents, the **CONSULTANT** will have the responsibility and authority to require special inspection or testing of the Work in accordance with the provisions of the Construction Documents, whether or not such Work be then fabricated, installed or completed.

1.4.11 The **CONSULTANT** shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples. Such action shall be taken with reasonable promptness so as to cause no delay.

1.4.12 The **CONSULTANT** shall prepare documentation in support of Change Orders and Forced Accounts for the Owner's approval and execution in accordance with the Construction Documents.

1.4.13 The **CONSULTANT** shall conduct inspections to determine the Dates of Substantial Completion and final completion, and shall receive and forward to the Owner for the Owner's review written warranties and related documents required by the Construction Documents and assembled by the Contractor.

1.4.14 Upon completion of the job by the Contractor, the **CONSULTANT** shall plan, in writing, and direct a complete final operational checkout of the entire Mechanical, Electrical, Fire Protection, Security and Life Safety systems and prepare a report verifying that the operation of all equipment and systems are proper and meeting the **CONSULTANT**'s design intent.

1.4.15 The **CONSULTANT** shall prepare a set of reproducible record drawings showing actual construction. These drawings shall be based on all Change Orders issued during construction, knowledge gained through Project visits, and marked-up prints furnished by the Contractor. When the Owner has requested that drawings be done on CAD, the Software shall be AutoCad, latest release for Windows. The Owner shall be furnished with 3.5" disks of all work. Drawings, and/or diskettes to be sent to Project Manager, 2405 Grand Avenue, Suite 200, Kansas City, MO 64108.

1.4.16 The extent of the duties, responsibilities and limitations of authority of the **CONSULTANT** as the Owner's representative during construction shall not be modified or extended without written consent of the Owner and **CONSULTANT**.

ARTICLE 2 THE OWNER'S RESPONSIBILITIES

2.1 The Owner shall provide full information regarding requirements for the Project.

2.2 The Owner shall designate a representative authorized to act in the Owner's behalf with respect to the Project. The Owner's representative shall examine the documents submitted by the **CONSULTANT** and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the **CONSULTANT**'s services.

2.3 The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including such auditing services as the Owner may require to verify the Contractor's Applications for Payment.

2.4 The services, information and reports required by Paragraph 2.3 shall be furnished at Owner's expense. The Owner shall furnish all such information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the **CONSULTANT**'s services and of the Work.

ARTICLE 3 REIMBURSABLE EXPENSES

Reimbursable Expenses are in addition to **CONSULTANT**'s Fee and include actual expenditures made by the **CONSULTANT** and the **CONSULTANT**'s employees and consultants in the interest of the Project for the expenses listed in the following Subparagraphs:

3.1 Expense of transportation in connection with the Project; living expenses in connection with out-of-town travel; long distance communications, and fees paid for securing approval of authorities having jurisdiction over the Project.

3.2 Expense of reproductions, postage, and handling of Drawings, Specifications, and other documents, excluding reproductions for the office use of the **CONSULTANT** and the **CONSULTANT**'s consultants.

3.3 Photographic production techniques and expenses of data processing, excluding the use of personal computers used for normal word processing, cost accounting and billing procedures, when used in connection with additional services.

3.4 Expense of any additional insurance coverage or limits, including professional liability insurance, requested by the Owner in excess of that normally carried by the **CONSULTANT** and the **CONSULTANT**'s consultants.

3.5 Expense of fees for **CONSULTANT** and labor under contract to the **CONSULTANT**. Costs incurred for administering and managing **CONSULTANT** and contract labor are to be billed within overhead and clerical time without further markup.

3.6 Expense of plotting computer-generated drawings (CAD) at completion of Schematic Design Phase (30%). Design Development Phase (60%), Construction Document Phase (90%) and Final Document (100%). Also included are any special CAD support services, i.e., translation, scanning etc., necessary for the completion of the project.

ARTICLE 4 PAYMENTS

4.1 Hours invoiced shall be consistent with the appropriate level of skills and expertise required to properly complete each portion of the work. Invoiced rates shall be consistent with the work performed when compared to the **CONSULTANT**'s fee schedule.

4.2 If the Project is suspended or abandoned in whole or in part for more than three months, the **CONSULTANT** shall be compensated for all services performed (actual Direct Labor hours times rates in schedule) prior to receipt of written notice from the Owner of such suspension or abandonment, together with Reimbursable Expenses then due. If the Project is resumed after being suspended for more than three months, the **CONSULTANT**'s compensation shall be equitably adjusted.

4.3 If the scope of the Project or the **CONSULTANT**'s services are changed, the compensation shall be equitably adjusted. The **CONSULTANT** shall not proceed with any work associated with a change in Project Scope without prior written approval of the Owner.

4.4 The **CONSULTANT** may submit invoices monthly, and shall include payroll records and receipts necessary to document invoices. Cost of Reimbursable shall be summarized as in Article 3. Invoices shall be mailed to the Owner, P.O. Box 411435, Kansas City, MO 64141-1435, Attn.: Accounts Payable. All invoices must reference Owner's Contract Number. Lien Waivers will be submitted with each invoice..

ARTICLE 5 ACCOUNTING RECORDS

5.1 Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a Multiple of actual Direct Labor Hourly Expense shall be kept on the basis of generally accepted accounting principles and shall be available to the Owner or the Owner's authorized representative during normal business hours.

5.2 The **CONSULTANT** shall insure that similar records of those Professionals who have contracted with the **CONSULTANT** to perform work on the Owner's project will likewise be available for inspection.

ARTICLE 6 OWNERSHIP AND USE OF DOCUMENTS

6.1 Drawings and Specifications are instruments of service and shall remain the property of the **CONSULTANT** whether the Project for which they are created is executed or not. The Owner shall be permitted to retain copies, including reproducible copies, of Drawings and Specifications for use in accordance with the following rights and license. The **CONSULTANT** shall grant Owner and its parent and affiliated companies a perpetual, non-exclusive, fully-paid license

and right to use any and all drawings, specifications, exhibits and other documents prepared pursuant to this contract and accepted by Owner (collectively, the "Design Documents"), or any part thereof, in such manner and for such purposes as Owner may elect (including projects other than the project herein described), and to modify any or all of the Design Documents or any part thereof; provided, however, that Owner shall indemnify **CONSULTANT** against and hold **CONSULTANT** harmless from any liabilities which may arise as a result of Owner's use of the Design Documents for any project other than the project herein described, or as a result of any modification of the Design Documents by Owner.

6.2 Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the **CONSULTANT**'s rights.

ARTICLE 7 TERMINATION OF AGREEMENT

7.1 This Agreement may be terminated by either party upon seven days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.

7.2 This Agreement may be terminated by the Owner at will upon 15 days written notice to the **CONSULTANT**.

7.3 Loss of key design personnel through termination, illness, or death shall be justification for termination of this agreement at the Owner's discretion.

7.4 In the event of termination not the fault of the **CONSULTANT**, the **CONSULTANT** shall be compensated for all services performed to termination date, together with Reimbursable Expenses then due.

ARTICLE 8 INSURANCE

These shall be procured and maintained during the term of this agreement for the benefit of the Owner insurance under the following terms and conditions:

8.1 During the term of this contract, the **CONSULTANT** shall have the sole responsibility to procure and maintain in insurance companies acceptable to the Owner insurance as follows:

8.1.1 Worker's Compensation benefits as required by statute and provide Employers Liability coverage with minimum limits of \$500,000/1,000,000/500,000, covering all employees performing work under this contract.

8.1.2 Commercial General liability coverage with the following limits: Bodily Injury Liability and Property Damage - \$1,000,000. Combined Single Limit Each Occurrence and \$2,000,000 general aggregate. Limits of Liability shall apply jointly and not severally to all insured entities.

The Commercial General Liability Policy will include:

- a) Broad Form Property Damage Coverage
- b) Blanket Contractual Liability
- c) Personal Injury Liability
- d) Cross Liability Protection where additional insured parties are added.

The general liability policy shall be endorsed to add the Owner and Owner's parent as an additional Insured and shall be arranged to acknowledge that it is primary before any other insurance available to the additional insured parties. The Owner shall be furnished a copy of the endorsement naming the owner and owner's parent as an additional Insured

8.1.3 Commercial Automobile Liability Insurance, insuring the ownership, maintenance or use of any owned, non-owned or hired automobile used in the performance of the work hereunder, for the following limits of liability.

- a) Bodily Injury and Property Damage Liability \$1,000,000
- b) Combined single limit for each occurrence.

8.1.4 Professional liability insurance providing coverage limits of at least \$1,000,000.00 per claim. If the policy includes an exclusion of coverage for liability of others assumed by contract, the exclusion shall provide an exception for such claims that would otherwise be covered in the absence of such contractual assumption. The **CONSULTANT** will use all commercially reasonable efforts to maintain such professional liability insurance for three years following completion of the project or, if the policy is placed on a project basis, cause said insurance to include a three year discovery period commencing at the completion of the project. **CONSULTANT** confirms that, as of the commencement of this agreement, the full aggregate limit of the policy is available and unimpaired by known or paid losses.

8.1.5 Additional insurance as is required by law or otherwise for disability benefits and other similar employee benefits.

8.1.6 Any type of insurance not described in this article which the **CONSULTANT** requires for its own protection or on account of statute.

8.2 Certificates of Insurance. Certificates of Insurance, standard Acord Form or an equivalent form, shall be filed with the Director of Risk Management for the Owner prior to commencement of the work. These Certificates shall contain a provision that coverage's afforded under the policies will not be canceled or reduced until prior written notice has been given in accordance with policy provisions.

8.3 Insurance Option: Notwithstanding the provisions of paragraphs 8.1 of this Agreement, it is agreed that at any time during the period of this Agreement, the Owner shall have option of providing any or all of the insurance required therein for the benefit of the **CONSULTANT** and the Owner. Certificate(s) of coverage will be furnished to all interested parties. Details of each contract and coverage conditions will be furnished when specifically requested. In the event that the Owner does not exercise any or all of its options, the **CONSULTANT** shall nevertheless be obligated to comply with all the insurance requirements relating to this Agreement and shall furnish the Owner with certificates evidencing such required insurance, including insurance of the hold harmless indemnity recited herein.

8.4 Indemnification. The **CONSULTANT** will take precaution to prevent accidents or injuries to persons or property and will hold the Owner and owner's parent harmless from, defend and indemnify against any and all loss damage, claims, liability, cost or expense, including reasonable attorney's fees and other costs of defense, arising out of or in connection with any breach of this Agreement or any negligent acts, errors or omissions by the **CONSULTANT**, its agents, subcontractors, **CONSULTANT**s, employees or invitees in the performance of the Agreement. The **CONSULTANT** shall not be responsible for the acts or omissions of the Contractor, or any Subcontractor, or any of the Contractor's or Subcontractor's agents or employees or any other persons performing any of the work.

8.5 The **CONSULTANT** assumes full responsibility for all loss or damage and for any cause whatsoever to any tools, machinery, equipment or other vehicles owned or rented by the **CONSULTANT**, its agents or subcontractors, material, men or their employees and to shanties or other temporary structures maintained for use of the **CONSULTANT** on the Project site.

8.6 Nothing in this Agreement shall be deemed to relieve the **CONSULTANT** from its responsibility or liability from its intentional wrongful acts.

**ARTICLE 9
SUCCESSORS AND ASSIGNS**

9.1 The Owner and the **CONSULTANT**, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the **CONSULTANT** shall assign, sublet or transfer any interest in this Agreement without the written consent of the other.

**ARTICLE 10
GOVERNING LAW**

10.1 This Agreement shall be governed by the laws of the state of Missouri.