



## GENERAL CONDITIONS

### SECTION 1 DEFINITIONS

- 1.01 Available for Use (Substantial Completion):** The stage in the progress of the Work when the Work is sufficiently complete so that the City can occupy or use the Work for its intended use. The date on which a Project is deemed Available for Use is in the sole discretion of the City.
- 1.02 Change Order:** A written order to the Contractor signed by the City, issued after the execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Construction Schedule.
- 1.03 City:** City of Wentzville. The City is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term City means the City or its authorized representative. The City may be alternatively referred to as the "Owner."
- 1.04 Contract:** The Contract Documents form the Contract. The Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, both written and oral, including the bidding documents. The Contract may be amended or modified only by a Modification as defined in Section 1.02.
- 1.05 Contract Documents:** Contract Documents shall include all those documents identified as the Contract Documents in the City-Contractor Agreement. The Contract Documents shall include any and all modifications as defined as (1) a written amendment to the Contract signed by either parties, or (2) an executed Change Order.
- 1.06 Contract Sum:** The total amount payable by the City to the Contractor for the performance of the Work as stated in the City-Contractor Agreement.
- 1.07 Contract Time/Contract Days:** Period of time allotted in the Contract Documents for completion of the Work. Said work shall include all punch list items deemed necessary by the City, exclusive of punch list items generated by any public authority having jurisdiction other than the City. The date of completion of the Contract shall be the date when all work including City punch list items have been approved in writing by the City.
- 1.08 Contractor:** The Contractor is the successful bidder awarded the work of constructing the project identified as such in the City-Contractor Agreement. The Contractor is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Contractor means the Contractor or his authorized representative(s).
- 1.09 Date of Commencement of the Work:** Date established in the written Notice to Proceed on which the Contractor is to begin prosecution of the Work.
- 1.10 Day:** Calendar day.
- 1.11 Director:** Director of Public Works of the City of Wentzville, or his/her authorized representative(s)

- 1.12 Final Acceptance:** Written notice from the City to the Contractor stating that the Project including all Work, any deficiencies as outlined in the Final Inspection, and all Project Closeout items and activities have been completed and the City accepts the Project.
- 1.13 Final Inspection:** Inspection performed and provided by the City to the Contractor upon the Contractor's request and based upon his determination that the Project is Available for Use.
- 1.14 Final Payment:** Last payment made to the Contractor, typically retainage due, upon Final Acceptance of the Project.
- 1.15 Notice to Proceed:** Written notice from the City notifying the Contractor of the date on or before which he is to begin prosecution of the work.
- 1.16 Project:** The total construction of which the Work performed under the Contract Documents may be the whole or a part.
- 1.17 Project Closeout:** The time period of the Work after Available for Use when the Work and all administrative requirements have been or are being completed in their entirety. The Project Closeout period is typically 90 days.
- 1.18 Removal:** Removal of material and disposal of said material off-site.
- 1.19 Specifications:** City of Wentzville Construction Specifications and Standard Details, latest edition, unless otherwise specified.
- 1.20 Subcontractor:** A Subcontractor is a person or organization who has a direct contract with the Contractor to perform any of the Work. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative.
- 1.21 Sub-subcontractor:** A Sub-subcontractor is a person or organization who has a direct or indirect contract with a Subcontractor to perform any of the Work. The term Sub-subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Sub-subcontractor or an authorized representative thereof.
- 1.22 Work:** All labor necessary to complete the construction required by the Contract Documents, and all materials and equipment incorporated or to be incorporated in such construction.

## **SECTION 2 CONTRACT DOCUMENTS**

### **2.01 Execution, Correlations, Intent, and Interpretations**

**2.01.1** The Contract Documents shall be signed by the City and Contractor.

**2.01.2** The Contractor represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents.

**2.01.3** The Contract Documents are complementary and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include all labor, materials, equipment and other items necessary for execution and completion of the Work. Words which have well-known technical or trade meanings are used herein in accordance with such recognized meanings.

### **2.02 Copies Furnished and Ownership**

**2.02.1** Unless otherwise provided in the Contract Documents, the Contractor will be furnished a maximum of five (5) copies, free of charge, of the Drawings and Specifications, if any, for the execution of the work.

**2.02.2** Any Drawings, Specifications and copies thereof furnished by the City are and shall at all times remain property of the City. Such documents shall not be used on any other project. At the conclusion of the job, the Contractor shall submit one (1) set of drawings and specifications marked up throughout the course of work with any and all field changes.

## **SECTION 3 CITY**

### **3.01 City's Right to Access and Observation**

The City shall have access at all times to the Project for the purpose of observation and inspection. The Contractor shall provide proper and adequate facilities, specialized, tool and equipment for such access and observation.

### **3.02 City's Right to Stop Work**

If the Contractor fails to correct defective Work or fails to supply materials or equipment in accordance with the Contract Documents, the City may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

### **3.03 City's Right to Carry Out the Work**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform any provision of the Contract, the City may, after written notice to the Contractor and without prejudice to any other remedy the City may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or hereafter due the Contractor the cost of correcting such deficiencies. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the City promptly upon request.

### **3.04 City's Right to Award Separate Contracts**

The City's reserves the right to award other contracts on other terms and conditions with other portions of the Project.

### **3.05 City's Right to Clean Up**

If a dispute arises between separate contractors as to their responsibility for cleaning up as required by Section 4.08, the City may clean up and charge the cost thereof to the several contractors.

### **3.06 Status of the Director**

The Work shall be subject at all times to the supervision and direction of the Director. To prevent disputes and litigation, it is mutually agreed that the Director shall, in all cases, determine the amount or quantity of the various kinds of work, and the quality of materials and workmanship to be paid for under this Contract, and he shall decide all questions which may arise relative to the performance of the work covered by the Contract. Any doubt as to the meaning of the Contract and any obscurity or discrepancy as to their working and intent will be explained by the Director, and this explanation shall be final and binding by both parties of this Contract. The Director may amend or correct any errors or omissions in the Specifications when such amendments or corrections are necessary to make definite the intent indicated by a reasonable interpretation of the Contract.

### **3.07 Authority of the Engineer**

The engineer will decide all questions that may arise as to the quality, quantity, and acceptability of material furnished and the work performed, and as to the rate of progress of the work; all questions that may arise as to the interpretation of the plans and specification; all questions of classification; the power of compensation of the performance or breach of the contract; and all claims or controversies of any character whatsoever in connection with or growing out of the construction, whether claimed under the contract, under force account, under quantum merit or otherwise. The engineer's estimates and decisions shall be final, binding and conclusive upon all parties to the contract.

### **3.08 Authority and Duties of Inspector**

As the immediate representative of the City, the Inspector has direct charge of the delivery of work and is delegated commensurate authority for the administration of the project. The Inspector may reject defective material and suspend and reject any work that is being improperly performed. The Inspector will have no authority to modify the contract except in accordance with the contract documents or when expressly authorized by the Engineer.

## **SECTION 4 CONTRACTOR**

### **4.01 Supervision and Construction Procedures**

**4.01.1** The Contractor shall supervise and direct the Work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work.

**4.01.2** All Work shall be in accordance with the Contract Document and Specifications

**4.01.3** The contractor shall have at the work site at all times, as the contractor's agent, a competent individual capable of reading and thoroughly understanding the plans and specifications and thoroughly experienced in the type of work being performed, whom shall receive instructions from the engineer. That individual shall have full authority to execute orders or directions of the engineer without delay and to promptly supply material, equipment, tools, labor and incidentals as may be required.

### **4.02 Labor and Materials**

**4.02.1** Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, materials, equipment, supplies, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work.

**4.02.2** The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him. If the City reasonably objects to any person employed by the Contractor, the employee shall be immediately dismissed.

**4.02.3** The labor provided by the Contractor shall be directed to be a workman like character with respect to the methods of construction and quality of completed work; and, shall not encumber the premises or adjacent property or streets with materials and/or equipment.

**4.02.4** The Contractor shall comply with, and is bound by, the provisions of Missouri law pertaining to the payment of wages on public works projects contained in Sections 290.210 through 290.340 RSMo., and any amendments thereto, including, but not limited to the following:

**4.02.4.1** In accordance with Section 290.250 RSMo., as amended, the Contractor shall not pay less than the prevailing hourly rate of wages specified by the Missouri Department of Labor and Industrial Relations Division of Labor Standards to all workmen performing Work under the Contract.

**4.02.4.2** In accordance with 290.250 RSMo., as amended, the Contractor shall forfeit as a penalty to the City one hundred dollars (\$100.00) for each workman employed for each calendar day, or portion thereof, such workman is paid less than the said stipulated rates for any Work done under the Contract, by him or by any Subcontractor under him and shall include provisions in all bonds guaranteeing the faithful performance of said prevailing hourly wage clause.

**4.02.4.3** In accordance with 290.265 RSMo., as amended, the Contractor and each Subcontractor shall post a clearly legible statement of all prevailing hourly wage rates to be paid to all workmen employed to complete the Work in a prominent and easily accessible place at the site of the Work and such notice shall remain posted during the full time that any workmen shall be employed at the Work.

**4.02.4.4** Certified payrolls shall also be submitted prior to final payment for all work completed by the Contractor or Subcontractors.

**4.02.4.5** In accordance with Section 290.290 RSMo., as amended, before final payment is made an affidavit must be filed by the Contractor stating that he has fully complied with the prevailing wage law. No payment shall be made unless and until this affidavit is filled in proper form and order.

**4.02.5** The Contractor shall execute and complete the Work in such a manner that avoids jurisdictional and other disputes among labor unions.

**4.02.6** Except as otherwise required by law, during a period of excessive unemployment in the State of Missouri, the Contractor shall employ only Missouri laborers and laborers from nonrestrictive states on the Project, as provided in Sections 290.550 to 290.580 RSMo.

**4.02.7** If the Contract Documents have indicated that the Project is financed in whole or in part from Federal funds, then this Contract shall be subject to all applicable federal statutes, rules and regulations, including provisions of the Davis-Bacon Act, 40 U.S.C. §3141 et seq., and the "Federal Labor Standards Provisions," incorporated into this Contract. Where the Missouri Prevailing Wage Law and the Davis-Bacon Act require payment of different wages for work performed under this Contract, the Contractor and all Subcontractors shall pay the greater of the wages required under either law.

**4.02.8** The Contractor shall employ only personnel authorized to work in the United States in accordance with applicable federal and state laws. This certification applies to State of Missouri Immigration Alien Laws and statutes required local government(s) to have proof of a person's lawful presence within the United States before distributing "Public Benefits" (contracts, purchase orders, etc.) to that Bidder.

### **4.03 Warranty**

The Contractor warrants to the City that all materials and equipment furnished under the Contract and incorporated in the Work will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not so conforming to these standards shall be considered defective. The Contractor shall furnish satisfactory evidence as to the kind and quality of all materials and equipment and shall guaranty the Work as provided in the City Contractor Agreement after substantial completion of the work.

### **4.04 Permits, Fees, Easements, Construction Limits and Notices**

**4.04.1** The Contractor shall secure and pay for all permits, governmental fees, and licenses necessary for the proper execution and completion of the Work, including those required to be obtained from the City, except fees imposed solely by the City shall be waived at the time of application.

**4.04.2** For the purposes of operating and maintaining the Project, the City shall acquire the necessary lands, easements and rights-of-way privileges required for the same. The Contractor shall furnish and construct any necessary access roads or facilities.

**4.04.3** The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the City in writing and any necessary changes shall be adjusted by appropriate Modification. If the Contractor performs any Work knowing it to be contrary to such

laws, ordinances, rules and regulations and without such notice to the City, the Contractor shall assume full responsibility therefor and shall bear all costs attributable thereto.

**4.04.4** The construction limits consist of public areas and acquired easement areas, as shown in the Contract Documents. The Contractor shall limit his operations accordingly. No activity outside the public areas or easement areas shall be performed without the express written permission of the property owner.

**4.04.5** The Contractor shall notify in writing all residents whose property is affected by the Work at least forty-eight (48) hours prior to commencement of any operation that will affect the residents' property. The City, before commencement of work on the Project, shall review and approve the form of all such notices.

#### **4.05 Superintendent**

**4.05.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance on the Project site at all times during the progress of all work for the duration of the total project.

**4.05.2** This person shall be a non-working superintendent who will be responsible for the satisfactory progression of the work and to ensure that all work is being completed in accordance with the plans and specifications. He is also to relay any conflicts or discrepancies that arise in the plans to the City's representative for resolution or interpretation.

**4.05.3** The name of the person selected as superintendent and his qualifications shall be submitted and shall be approved in writing by the City. The superintendent shall not be changed except with the written consent or at the request of the City. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor.

**4.05.4** The superintendent shall be the contact person whom the City will contact in the event of after-hours and weekend emergencies and the Contractor shall provide the City with the superintendent's contact information for such purpose.

#### **4.06 Responsibility for Those Performing the Work and for the Work**

**4.06.1** The Contractor shall be responsible to the City for the acts and omissions of all his employees, all Subcontractors, and suppliers their agents and employees and all other persons performing any of the Work under a contract with the Contractor.

**4.06.2** The Contractor shall at all times employ sufficient labor and equipment for prosecuting the work to full completion in the manner and time required by these specifications. All workmen shall have sufficient skill and experience to perform properly the work assigned to them.

**4.06.3** Prior to the completion of the work by the Contractor and the acceptance thereof by the Owner, the work shall remain at the risk of the Contractor; and said Contractor shall be required to repair, replace, renew, and make good, at his own expense, all damages caused by force, vandalism, or violence of the elements or any other cause whatsoever provided; however, that in such cases the contractor shall be entitled to a reasonable extension of time which to complete said work. In case of suspension of work from any cause whatever, the Contractor shall be responsible for the project and shall take such precautions as may be necessary to prevent damage to the project, for normal drainage, and shall erect any necessary warning signs or barricades at his expense. The Contractor shall properly and continuously maintain the roadway for local traffic.

#### **4.07 Drawings and Specifications at the Site**



**4.07.1** The Contractor shall maintain at the site for the City one copy of any Drawings, Specifications, Addenda, approved Shop Drawings, Change Orders and other Modifications, in good order and marked to record all changes made during construction.

**4.07.2** The Drawings, marked to record all changes made during construction, shall be delivered to the City upon completion of the work. The Contractor shall also maintain on the project site a survey level, legs, and rod at all times, which are deemed adequate by the City.

#### **4.08 Cleaning Up**

**4.08.1** The Contractor shall at all times keep the premises free from accumulation of waste materials, rubbish, and debris caused by his operations. The Contractor shall not "stockpile" any material on the jobsite and all excavated material shall be hauled off the site at the time of excavation.

**4.08.2** Stockpiling of materials delivered and used on the same day will be allowed if all materials are in place or removed at the end of the day. Prior to final payment, Contractor shall restore and replace the surfaces of the project area to match the conditions existing prior to the work.

**4.08.3** The Contractor shall be responsible for keeping clean, i.e. free from mud, dirt, rock, and debris at all times all City streets used by the Contractor in connection with the Work and the Project. Should any accumulation be deemed excessive, the City may direct the Contractor to thoroughly wash or remove the debris from the street at no cost to the City.

**4.08.4** The Contractor shall make satisfactory arrangements to store material and equipment after delivery and during construction off of the City right-of-way. The City will assume no responsibility for these arrangements.

#### **4.09 Utilities**

##### **4.09.1 Interference with Existing Water and Sewer Services and Mains**

**4.09.1.1** The Contractor shall minimize the outage of water and sewer service to residents. The cutting off of water and sewer service shall be only with the consent of the City. The Contractor shall notify the City and have their approval prior to commencing work on each water or sewer main or connection item.

**4.09.1.2** The Contractor shall conduct his work in such a manner as not to endanger existing water or sewer mains, services or appurtenances. Mains and services shall be adequately supported where they cross or are adjacent to the excavation. The Contractor shall bear the cost of all repairs to water or sewer mains or appurtenances damaged because of his own carelessness or neglect.

**4.09.1.3** When it becomes necessary to shut down any existing water or sewer main, a representative of the City shall be present during this operation. The total time for the main to be shut down should be held to a minimum and in no case shall any customer be without water or sewer service for more than eight (8) hours. The Contractor shall notify each water or sewer customer whose water or sewer service will be interrupted at least one hour prior to shut down. The Contractor shall assume full responsibility for shutting down the main and notifying the customers.

##### **4.09.2 Coordination with Utilities**

The Contractor shall contact and coordinate with all affected utilities prior to commencing any operations. Prior to commencement of any work involving excavation, demolition of facilities or the erection of posts, it will be the sole responsibility of the Contractor to notify all utilities of the planned work and request that the utilities suitably mark underground installations in the vicinity of the planned work, and arrange for disconnection of any necessary utilities.

#### **4.10 Cash Allowances**

The Contractor acknowledges and agrees that the Contract Sum includes all cash allowances as may be specified in the Contract Documents.

#### **4.11 Equal Employment Opportunity**

The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or disability. The Contractor shall incorporate the foregoing requirements of this paragraph in all of its subcontracts for work performed under the terms and conditions of this Contract. A breach of this provision may be grounds for Contract termination.

#### **4.12 Accident Prevention: OSHA**

**4.12.1** In the performance of this Contract, the Contractor shall comply with all applicable Federal, State, county and local laws governing safety health and sanitation. The Contractor and any subcontractor shall not require any worker or mechanic employed in performance of this Contract to work in surroundings or other working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under Construction Safety and Health Hazards, Title 29, Code of Federal Regulations, Part 1926.

**4.12.2** The Contractor shall require all on-site employees to complete a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program provided by the contractor which includes a course in construction safety and health approved by OSHA or a similar program approved by MoDOLIR which is at least as stringent as an approved OSHA program, as required under Subsection 292.675.2 RSMo. All employees are required to complete the program within sixty days of beginning work under this contract. The successful bidder shall also require all subcontractors under the contractor to provide the ten-hour training program required under Subsection 292.675.2 RSMo. to such subcontractors' on-site employees.

## **SECTION 5 SUBCONTRACTORS**

### **5.01 Award of Subcontracts and other Contracts for Portions of the Work**

**5.01.1** Unless otherwise specified in the Contract Document, the Contractor shall submit a completed Subcontractor Utilization Form, naming each Subcontractor and Supplier the Contractor proposes to employ in performing the Work under this Contract and describing the portions of the Work each proposed Subcontractor shall perform or supply, along with other required Contract documents to the City. Contractor shall complete and submit a Supplemental Subcontractor Utilization form to the City in the event of any substitution or addition of a Subcontractor by the Contractor.

**5.01.2** Prior to the award of the Contract, the City will notify the Bidder in writing if the City, after due investigation, objects to any such person or entity proposed by the Bidder pursuant to Section 5.01.1 above. If the City objects to any such proposed person or entity, the Bidder may, at his option, (1) withdraw his Bid, or (2) submit an acceptable substitute person or entity with no adjustment in his bid price.

**5.01.3** The City reserves the right to reject a Subcontractor, if in the City's sole discretion, delays may result in the performance of Work as a result of a Subcontractor's other obligations. The Contractor shall be held responsible, in addition to the submission of the Subcontractor Utilization Form, to apprise the City of any additional work which a Subcontractor accrues throughout the duration of the project. This shall include work for the City under a different Contract, or any other person or entity. If such said additional work shall detrimentally impact the progression of the Work under this Contract, the City retains the right to require the Contractor to submit a substitute Subcontractor for this work at no additional cost to the City.

**5.01.4** The Contractor shall not contract with any Subcontractor or any person or organization (including those who are to furnish materials or equipment fabricated to a special design), for proposed proportions of the Work designated in the Contract Documents or, if none is so designated, with any Subcontractor proposed for the principal portions of the Work, who has been rejected by the City.

**5.01.5** If the City requires a change of any proposed Subcontractor or person or organization during the execution of the Work approved under the Contract, the Contract Sum shall be increased or decreased by the difference in cost resulting from such change and an appropriate Change Order shall be issued.

**5.01.6** The Contractor shall not make any substitution for any proposed Subcontractor or person or organization that has not been accepted by the City prior to the Contract Award, unless the substitution is accepted by the City in writing prior to such substitution.

### **5.02 Sub-contractual Relations**

**5.02.1** All work performed for the Contractor by a Subcontractor shall be pursuant to an appropriate agreement between the Contractor and Subcontractor (and where appropriate between Subcontractors and Sub-subcontractors) which shall contain provisions that:

**5.02.1.1** Require the Work to be performed in accordance with the requirements of the Contract Documents;

**5.02.1.2** Require submission to the Contractor of applications for payment under each subcontract to which the Contractor is a party, in reasonable time to enable the Contractor to apply for payment in accordance with Article 8 hereof;

**5.02.1.3** Require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to the Contractor (via any Subcontractor or Sub-subcontractor where appropriate) in sufficient time so that the Contractor may comply in the manner provided in the Contract Documents for like claims by the Contractor upon the City;

**5.02.1.4** Waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by the property insurance described in Paragraph 10.2, except such rights as they may have to the proceeds of such insurance held by the City as trustee under said Paragraph 10.2;

**5.02.1.5** Obligate each Subcontractor specifically to consent to the provisions of this Paragraph 4.3;

**5.02.1.6** Require the Subcontractor (and the Sub-subcontractor) to indemnify and hold harmless the City against all claims, damages, losses, expenses and attorneys' fees arising out of or resulting from the performance of the Work by Subcontractor, and its agents and employees, unless such claims, damages or losses are caused solely by the negligent act of the City.

### **5.03 Payment to Subcontractors**

**5.03.1** The Contractor shall pay each Subcontractor upon receipt of payment from the City, an amount equal to the percentage of completion allowed to the Contractor on account of such Subcontractor's Work, less the percentage retained from payments to the Contractor. The Contractor shall also require each Subcontractor to make similar payments to his Subcontractors.

**5.03.2** If the City withholds payment to the Contractor for any cause which is the fault of the Contractor and not the fault of a particular Subcontractor, the Contractor shall pay that Subcontractor on demand for its Work to the extent completed.

**5.03.3** The City shall not have any obligation to pay or to see to the payment of any sum to any Subcontractor or Sub-subcontractor.

## **SECTION 6 SEPARATE CONTRACTS**

### **6.01 Mutual Responsibility of Contractors**

**6.01.1** The Contractor shall afford other contractors reasonable opportunity for the delivery and storage of their materials and equipment and the execution of their work, and shall properly connect and coordinate the Work with theirs. The Contractor shall employ, insofar as possible, such methods and means in carrying out the Work as will not cause any interruption or any interference with any other contractor.

**6.01.2** If any part of the Work depends for proper execution or results upon the work of any other separate contractor, the Contractor shall inspect and promptly report to the City any apparent discrepancies or defects in such work that render it unsuitable for proper execution of the Work. Failure of the Contractor to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper to receive the Work, except as to defects which may develop in the other contractor's work after the execution of the Contractor's Work that could not have been discovered by the Contractor upon reasonable inspection.

**6.01.3** If the Contractor causes damage to the work or property of any other contractor on the Project, and such separate contractor sues the City or initiates an arbitration proceeding on account of any damage alleged to have been so sustained, the City shall notify the Contractor who shall defend such proceedings at his own expense, and if any judgment or award against the City arises therefrom the Contractor shall pay or satisfy it and shall reimburse the City for all attorneys' fees and court arbitration costs which the City has incurred.

## **SECTION 7 MISCELLANEOUS PROVISIONS**

**7.01.1 Governing Law.** The Contract shall be governed by and construed and interpreted in accordance with the internal laws of the State of Missouri, without regard to its principles of conflict of laws, and shall be deemed to be executed and performed in the County of St. Charles, Missouri. Any legal action arising out of, or relating to this agreement, shall be governed by the laws of the State of Missouri, and the parties agree to the exclusive jurisdiction and venue over them by a court of competent jurisdiction located in the County of St. Charles, Missouri, or the U.S. District Court for the Eastern District of Missouri. The Contractor shall at all times observe and comply with all Federal and State laws, all local laws, ordinances, and regulations existing at the time of or enacted subsequent to the execution of the Contract which, if in any manner, affect the prosecution of the Work.

**7.01.2** The Contractor and his surety shall indemnify and save harmless the City and all of its representatives, engineers, consultants, and employees against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by himself, his employees, or his subcontractors.

**7.01.3** Changes may be made to this contract as a result of any ordinance, law and/or directive issued by the City and/or the State of Missouri and/or the Federal Government. Should such a change occur the Contract shall be amended reflecting such change and signed by both parties acknowledging the change(s).

### **7.02 Successors and Assigns**

The City and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract without the prior written consent of the other, nor shall the Contractor assign any sums due or to become due to him hereunder, without the prior written consent of the City.

### **7.03 Notices**

Any notice to any party pursuant to or in relation to the Contract shall be in writing and shall be deemed to have been duly given when delivered in person to the individual or member of the firm or to an officer of the corporation for whom it was intended, or when deposited in the United States mail, registered or certified with postage prepaid addressed to the last business address known to the party giving the notice.

### **7.04 Rights and Remedies**

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

### **7.05 Royalties and Patents**

The Contractor shall pay all royalties and license fees payable on all designs, processes or products used in connection with the work or incorporated therein, unless otherwise agreed upon by the City. The Contractor shall defend all suits or claims for infringement of any patent rights and shall indemnify and hold the City harmless from and against any loss on account thereof.

## **SECTION 8 TIME**

### **8.01 Progress and Completion**

**8.01.1** All time limits stated in the Contract Documents are of the essence of the Contract.

**8.01.2** The Contractor shall begin the Work on the date of commencement provided in the Notice to Proceed.

**8.01.3** The Contractor shall carry the Work forward expeditiously with adequate forces and shall make the Project Available for Use within the allotted number of Days as provided for in the Contract Documents and in accordance with the construction schedule.

**8.01.4** The Contractor shall complete Project Closeout within 90 days of the Project being deemed Available for Use. Delay of Project Closeout can result in liquidated damages.

### **8.02 Hours of Work**

The Contractor shall not perform any work nor move any equipment except between 7:00 A.M. and 6:00 P.M. Monday through Friday without the written consent of the City. No work shall be done on Saturday, Sunday, or City holidays, unless approved by the City in advance.

Unauthorized Work done outside of the working hours stated above is subject to rejection and removal and replacement at the Contractors expense.

### **8.03 Overtime**

If overtime work is authorized, as per Section 8.02, and the Contractor fails to appear as scheduled, the City shall deduct the cost for the City's assigned personnel from the Contract Sum for the time period schedule.

### **8.04 City Holidays**

No Work by the Contractor or Subcontractors shall be performed on City Holidays. Only Work considered "emergency work" shall be allowed, and shall be approved in advance by the Director. The following is a list of City Holidays:

New Year's Day, Martin Luther King Day, Presidents Day, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Friday after Thanksgiving, Christmas Eve, Christmas Day

### **8.05 Delays, Extensions of Time**

**8.05.1** Should the Contractor be delayed at any time during the execution of the Work by changes in the scope of work, or by strikes, lockouts, fire, unusual transportation delays, unavoidable casualties, or other delay beyond the control of and not reasonably foreseeable by the Contractor and such delay is approved by the City, the time for completion shall be extended for a period commensurate with the period of the delay by Change Order.

**8.05.2** In such event, the Contractor shall submit a written request for a time extension within seven (7) calendar days of the occurrence of the event causing the delay.

**8.05.3** Inclement weather shall not be considered a valid reason for extension of time, unless abnormal for the season and place of work. The Contractor shall make proper allowance for inclement weather in the bid submitted.

**8.05.4** In case of continuing delay, a single request for time extension by the Contractor shall be sufficient.

#### **8.06 Liquidated Damages**

Time is of the essence with this Project and delay in the project becoming Available for Use and/or in Final Acceptance will inconvenience the public and increase administrative costs of the City, the costs of which are inherently difficult to quantify and which the City is incapable of ascertaining at this time. Should the Contractor, or in the case of Contractor's default, the surety, fail to complete the Work and/or receive Final Acceptance within the times stipulated in this Contract, or within such extensions of time as may be allowed by the City in the manner set forth in the Contract, the Contractor (or surety, as applicable) shall pay to the City liquidated damages, as chargeable per the Contract, not as a penalty, but rather as a reasonable measure of the damages, based on the City's experience and given the nature of the losses that may result from delay.

#### **8.07 Suspension of Work:**

The Engineer may suspend the work or any portion thereof by written notice to the contractor, which notice shall fix the date on which work shall be resumed. The contractor will resume that work on the date so fixed. The contractor will be allowed an extension of the contract time, directly attributable to any suspension.



## **SECTION 9 MEASUREMENT OF QUANTITIES, PAYMENTS, AND COMPLETION**

### **9.01 Measurement of Quantities**

**9.01.1** Unless otherwise directed within the Job Specific Provisions, Technical Specifications and/or Methods of Measurement and Payment, the quantities for which payment will be made shall be those shown in the Contract for the various items, provided the project is constructed as shown on the plans. Contract quantities shall be used for final payment except when:

**9.01.1.1** Errors are formed in the original computations in excess of 15% of the contract quantities.

**9.01.1.2** An original cross section is found to have an average deviation from the true elevation in excess of one foot.

**9.01.1.3** An authorized change in grade, slope or typical section is made.

**9.01.1.4** Unauthorized deviations decrease the quantities on the plans.

**9.01.2** When the above conditions are encountered, the correction or revisions will be computed and added to or deducted from the contract quantity.

**9.01.3** When the plans have been altered or when disagreement exists between the Contractor and the City as to the accuracy of the plan quantities of any balance, or the entire project, either party shall have the right to request a re-computation of contract quantities within any area, by hand calculation of the average-end-area method for cubic yard quantities, and standard measurement methods for other quantities, by written notice to the other party. The written notice shall contain evidence that an error exists in the original elevation or in the original computations which will affect the final payment quantity in excess of 15%. When such final measurement is required, it will be made from the latest available ground surface and the design section.

**9.01.4** By Weight. These specifications require that the Contractor must furnish the representative of the City, on the job site, with original weight certificates on a daily basis signed by a bonded weigh master for all materials supplied by the Contractor that are incorporated into this work, which payment therefore is based on weight.

### **9.02 Application for Payment**

**9.02.1** The Contractor shall submit requests for payment not more than once monthly, on or before the 5<sup>th</sup> day of the month, upon substantial completion of various stages of the Work, and upon final completion of the Work.

**9.02.2** The request for payment shall be submitted to the City as an itemized Application for Payment pursuant to the City-Contractor Agreement on such forms and supported by such data substantiating the Contractor's right to payment as the City may require.

**9.02.3** If payments are to be made on account of materials or equipment to be incorporated into the Work and delivered and suitably stored at the site, such payments shall be conditioned upon submission by the Contractor of bills of sale, waiver of liens, or such other documents satisfactory to the City to establish the City's title to such materials or equipment or to otherwise protect the City's interest.

**9.02.4** By submitting an Application for Payment, the Contractor warrants and guarantees that title to all Work, materials and equipment covered by such Application for Payment, whether incorporated into the Work or not, will pass to the City upon the receipt of such payment by the

Contractor, free and clear of all liens, claims, security interests or encumbrances (hereinafter referred to as "liens").

### **9.03 Payment**

**9.03.1** If the Contractor has made Application for Payment as above, the City will make payment to the Contractor for such amount as it determines to be properly due pursuant to the Contractor's Application for Payment, or state in writing the City's reasons for withholding all or any portion of such payment within 30 days of the latter of:

**9.03.1.1** Delivery of materials or construction services;

**9.03.1.2** Date of Request for Payment or date Request for Payment is received;  
or

**9.03.1.3** In those instances in which the Contractor approves the Owner's estimate for payment, the date upon which such notice of approval is duly delivered.

**9.03.2** Five percent (5%) of the amount of each monthly request for payment shall be withheld until after completion by the Contractor and acceptance by the City of all Work. Exception: the Contractor is not required to provide a bond if the project is less than \$50,000 and City determines that a higher rate of retainage is required to ensure performance of the Contract, the retainage may be increased to ten percent (10%).

**9.03.3** No progress payment, nor any partial or entire use or occupancy of the Work by the City, shall be evidence of the satisfactory performance of the Work, either wholly or in part, or constitute an acceptance of any Work that is defective or improper or not otherwise completed in accordance with the Contract Documents.

### **9.04 Completion and Final Payment**

**9.04.1** Upon the Contractor's determination that the Project is Available for Use, ready for final inspection and acceptance, and upon receipt of a final Application for Payment, the City will promptly make such inspection. Any defects arising out of said inspection will be provided to the Contractor in writing and shall be promptly remedied at no additional cost to the City. When the City finds the Work acceptable under the Contract Documents and the Director has determined the Project is Available for Use, the City will make payment to the Contractor, less the total retainage, any penalties assessed against Contractor and authorized by law to be withheld by the City from its payment to the Contractor, and less any moneys which are due and payable to the City as liquidated damages.

**9.04.2** Upon the Director's determination that the Project is Available for Use, the Contractor shall complete Project Closeout within 90 days. Retainage payment shall not become due until the Contractor completes the Project Closeout, including addressing any and all deficiencies as noted in the Final Inspection, and submits the following, at a minimum, to the City:

**9.04.2.1** An Affidavit that all payrolls, bills for materials and equipment, and other indebtedness incurred in connection with the execution and completion of the Work for which the City or its property might in any way be responsible, have been paid or otherwise satisfied

**9.04.2.2** Consent of the surety, if applicable, to final payment

**9.04.2.3** An affidavit stating the Contractor has fully complied with the provisions and requirements of the Prevailing Wage Law, Section 290.210 through 290.340 RSMo., as amended,

**9.04.2.4** Other data, as required by the City, establishing payment or satisfaction of all such obligations, such as receipts and releases arising out of the Contract, to the extent and in such form as may be designated by the City

**9.04.2.5** Maintenance Bond.

**9.04.3** If any Subcontractor refuses to furnish a release or waiver required by the City, the Contractor may furnish a bond or other agreement satisfactory to the Director indemnifying the City against any liability relating to such Subcontractor. If any such claimed liability remains unsatisfied after all payments are made, the Contractor shall refund to the City all moneys that the City incurs or may be compelled to pay in discharging such claimed liability, including all costs and reasonable attorneys' fees.

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

## **SECTION 10 PROTECTION OF PERSONS AND PROPERTY**

### **10.01 Safety Precautions and Programs**

Public safety is of the utmost importance and is the sole responsibility of the Contractor to provide, erect, and maintain adequate protection throughout the project to protect the public. The Contractor shall initiate, maintain and supervise safety precautions and programs in connection with the performance of the Work.

### **10.02 Safety of Persons and Property**

**10.02.1** The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

**10.02.1.1** The general public;

**10.02.1.2** All employees on the Work and all other persons who may be affected thereby;

**10.02.1.3** All the Work, all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors; and

**10.02.1.4** Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, sprinkler systems, structures and utilities not designated for removal, relocation or replacement in the course of construction.

**10.02.1.5** All survey monuments and property markers which shall be carefully preserved in place by the Contractor who shall be responsible for the correct replacement of all such monuments and markers disturbed during the work.

**10.02.1.6** Any and all channels, swales, pipes, culverts, and all drainage structures in the project area; the Contractor shall provide for normal drainage and shall continuously maintain channels, swales, pipes, culverts, and all drainage structures in the project area. The Contractor is responsible for any damage caused by his failure to provide and maintain normal drainage.

**10.02.2** The Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction over the safety of persons or property to protect them from damage, injury or loss. The Contractor shall erect and maintain all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying the City and users of adjacent utilities. The Contractor shall provide signs, barrels, or any other safety devices which the City deems necessary for public safety. No additional payment will be made and this work shall be considered incidental to the Contract. The City will place safety devices as it deems necessary if the Contractor fails to provide the required items within 24 hours of notification. The Contract Sum shall be reduced by the cost of these devices.

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

**10.02.4** All damage or loss to any property caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by anyone for whose acts they may be liable, shall be remedied by the Contractor. The City shall document any complaint by any person regarding damage or loss to property caused by Contractor by

requesting such complainant to complete a Damage Claim form. A copy of the Damage Claim form shall be submitted by the City to the Contractor and the Contractor shall correct the problem, repair such damage or otherwise compensate the complainant or file a claim for such damage with Contractor's insurance company within ten (10) days of the receipt of the Damage Claim form from the City. If the City shall have a legitimate basis for believing that such claim is valid, the City shall have the option to withhold payment of funds until (i) such damages are repaired; or (ii) the City has been provided with evidence that that Contractor has made restitution to the complainant.

**10.02.5** The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated in writing by the Contractor to the City.

**10.02.6** All traffic and safety devices shall conform to the "Manual on Uniform Traffic Control Devices• for Streets and Highways", American National Standard Institute 06.1-1971. At all times until final acceptance of the Work, the Contractor shall provide and maintain at his own expense such signs, lights, watchmen, fences, and barriers as may be necessary to properly protect the work and provide for safe and convenient public travel. The Contractor shall provide the Owner with the name and telephone numbers of an individual who shall be on 24-hour call for erection and maintenance of the protection devices. The cost of any erection or maintenance of the warning or protection devices by City Forces may be filed against the Contractor's monthly or final statement without any notice to the Contractor. The Director shall, in all cases, determine questions which may arise relative to additional safety and control devices. No payment, as such, will be made because of these requirements; but the cost thereof will be considered as fully covered by the prices paid for other items of work. Failure to properly provide safety control devices in accordance with this section, the City will issue one written warning and a 24-hour grace period for the Contractor to obtain barricades. The second infraction, the City will place barricades at a cost of thirty-five dollars (\$35) per day safety device. The cost of the safety devices will be deducted from the Contractor's weekly priority invoices or monthly invoice.

## SECTION 11 INSURANCE

### 11.01 Contractor's Liability Insurance

**11.01.1** The Contractor shall purchase and maintain such insurance required in the Contract Documents to protect him from claims which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

**11.01.2** The insurance shall be written for not less than any limits of liability specified in the Contract Documents, or required by law, whichever is greater, and shall include contractual liability insurance as applicable to the Contractor's obligations for indemnification and reimbursement of attorneys' fees and costs under the Contract Documents.

**11.01.3** Certificate(s) of Insurance acceptable to the City shall be filed with the City prior to commencement of the Work. Certificate(s) of Insurance must state: "The City of Wentzville, Missouri is additional insured." These Certificates shall contain a provision that coverages afforded under the policies will not be canceled until at least 30 days prior written notice has been given to the City.

**11.01.4** Any insurance policy required as specified herein before, if written by an insurance company organized in a state other than Missouri, shall be countersigned by a Missouri resident agent of such company. Any certificate or other evidence of insurance, submitted to the City, shall be in a form acceptable to the City. In the case of policies written by companies organized in a state other than Missouri, the certificate of insurance, or other evidence submitted, shall be countersigned by a Missouri resident agent.

<u>Insurance Type</u>	<u>Amount</u>
Workers Compensation	An amount and type in full compliance with statutory requirements of Federal and State of Missouri law and Employees Liability coverage.
Comprehensive General Liability	\$1,000,000 each occurrence \$2,735,000 aggregate
Comprehensive Auto Liability	\$1,000,000 per occurrence

### 11.02 Property (Builder's Risk) Insurance

**11.02.1** Unless otherwise provided, the Contractor shall purchase and maintain property insurance (Builder's Risk Insurance) upon the entire Work at the site to the full insurable value thereof. This insurance shall include the interests of the City, the Contractor, Subcontractors and Sub-subcontractors in the Work and shall insure against the perils of Fire, Extended Coverage, Vandalism and Malicious Mischief.

**11.02.2** The Contractor shall purchase and maintain such steam boiler and machinery insurance as may be required by the Contract Documents or by law. This insurance shall include the interests of the City, the Contractor, Subcontractors and Sub-subcontractors in the Work.

**11.02.3** Certificate(s) of Insurance acceptable to the City shall be filed with the City prior to commencement of the Work. Certificate(s) of Insurance must state on the Certificate: "The City of Wentzville, Missouri is an additional insured." These Certificates shall contain a provision that

coverages afforded under the policies will not be canceled until at least 30 days prior written notice has been given to the City.

**11.02.4** Any loss insured by property insurance maintained by the City shall be adjusted with the City and made payable to the City as trustee for the insured, as their interests may appear, subject to the requirements of any applicable mortgagee clause.

**11.02.5** The City and Contractor waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance provided under this Paragraph 11.02 and the Contract Documents, City-Contractor Agreement, except such rights as they may have to the proceeds of such insurance held by the City as trustee. The Contractor shall require similar waivers by Subcontractors and Sub-subcontractors in accordance with Section 5.02 hereof.

## **SECTION 12            BOND REQUIREMENTS**

### **12.01   Bid Bond**

If the total project bid exceeds \$50,000 a Bid Bond shall be included in the Bid Proposal and shall be to five percent (5%) of the bid value. The Bid Bond will be required for the total project bid.

### **12.02   Performance Bond:**

If the Contract Sum is in excess of \$50,000 the Contractor shall procure and maintain a performance bond (the "Bond") for the benefit of the City of Wentzville ("City") as required by the laws of the State of Missouri and in an amount not less than 100% percent of the aggregate amount of the Contract. The Bond shall serve as security for the faithful performance of this Contract.

### **12.03   Payment Bond**

If the Contract Sum is in excess of \$50,000, the Contractor shall procure and maintain a payment bond (the "Bond") as required by the laws of the State of Missouri and in an amount not less than 100% percent of the aggregate amount of the Contract. The Bond shall serve to ensure the payment of all persons performing labor and furnishing materials in connection with this Contract. The Payment Bond shall meet all requirements of Section 107.170 RSMo.

### **12.04   Maintenance Bond:**

The Contractor shall procure and maintain a Maintenance Bond in the amount of 10% of the final Contract Sum after any and all Change Orders and/or formal contract amendments. The Maintenance Bond shall be in full force for a one (1) year guarantee period from the date of final acceptance. Final payment will not be made until the City receives the Maintenance Bond. The Bond shall serve to ensure required maintenance of the Project will be provided throughout the maintenance period.

### **12.05   Bond Premiums**

The premiums on all the Bonds shall be paid by the Contractor. The Bond shall remain in full force and effect during the life of the Contract (Performance and Payment) and during the term of any warranty (Maintenance) as required by the specifications and shall be held by the City.

### **12.06   Additional Requirements and Compliance**

**12.06.1** The Contractor represents, warrants, and guarantees, and Contractor shall also furnish to City a certificate of authority or some other evidence as deemed appropriate by the City establishing that the Bond is from a surety that is: authorized to do business in the State of Missouri, authorized to become surety on the bonds or obligations of persons or corporations, solvent with paid-up capital of not less than the applicable amount provided by the laws of Missouri, and, if organized outside the State of Missouri, in compliance with all the provisions of Missouri law relating to insurance companies other than life insurance companies. If, at any time, City shall become dissatisfied with any surety or sureties, or if for any other reason the Bond shall cease to be adequate security for City, Contractor shall, within ten days after notice from the City, substitute an acceptable bond (the "Additional Bond") in form and sum and signed by other sureties as may be satisfactory to City. The premiums on the Additional Bond shall be paid by contractor. All requirements herein applicable to the bond shall also be applicable to the Additional Bond. No further partial payments to Contractor shall be deemed due, nor shall be made until the sureties on the Additional Bond shall have qualified.

**12.06.2** Contractor shall furnish to City such Bond together with insurance or other documents required by the Contract. The current power of attorney for the persons who sign for any surety



company shall be attached to the Bond. The power of attorney shall be sealed and certified with the manual signature of an officer of the surety. A facsimile signature will not be accepted.

**12.06.3** The failure of the Contractor to supply the required Bond along with the evidence of the required insurance coverage and other documents required by the Contractor within ten working days after the executed acceptance is received by the Contractor, or within such extended period as may be granted by the City, the City may grant, based upon reasons determined sufficient by the City, shall constitute a default and the City may either award the contract to the next responsive bidder or re-advertise for bids, and may charge against the Contractor the difference between the amount of his/her bid and the amount for which a contract for the work is subsequently executed. If a more-favorable bid is received by re-advertising, the defaulting Contractor shall have no claim against City for a refund. Because of the difficulty of ascertaining the damages caused to City, said sum shall be considered liquidated damages and shall not constitute a penalty.

**12.06.4** The Contractor shall supply the following documents to verify the authenticity of the bonds and bonding company:

**12.06.4.1** Provide a certificate of authority from the Secretary of State of Missouri concerning the authority of the bonding company.

**12.06.4.2** Provide proof that the bonding company has an "A" rating from BEST'S or Standard and Poor's.

**12.06.4.3** Provide written verification from the bonding company that the bond exists and that it is an obligation of the contractor.

## **SECTION 13            CHANGES IN WORK**

### **13.01    Change Orders**

**13.01.1** The City, without invalidating the Contract, may order Changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, with the Contract Sum and the Construction Schedule being adjusted in accordance with the City-Contractor Agreement. All such changes in the Work shall be authorized by Change Order, and shall be executed under the applicable conditions of the Contract Documents.

**13.01.2** The Contract Sum and the Contract Time may be changed only by Change Order. The Contractor shall make all requests for a Change Order on forms provided by the City upon written request to the City.

**13.01.3** The cost or credit to the City resulting from a Change in the Work shall be determined in accordance with the City-Contractor Agreement.

**13.01.4** Changes in the Work outside of the general scope of the Contract shall require an amendment to the Contract.

### **13.02    Claims for Additional Cost**

If the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the City written notice thereof within twenty (20) days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor and approval granted by the City before proceeding to execute the Work. No such claim shall be valid unless so made. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

### **13.03    Minor Changes in the Work**

The City shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or the Construction Schedule and not inconsistent with the intent of the Contract Documents. Such changes may be effected by Field Order or by other written order. Such changes shall be binding on the City and the Contractor.

### **13.04    Changes in Excavation Work**

During construction, it may become necessary to increase the amount of excavation or to utilize a soil stabilization process if unsuitable subgrade conditions are found. The Contractor shall immediately contact the City if this condition occurs. The City and the Contractor shall agree upon the existence of unsuitable subgrade, the depth in which to remove the unsuitable soil, and the extent of the problem area prior to any additional work. No payment will be made for any area which undergoes additional excavation which is not indicated in the above scope of work and has not been approved by the City prior to the excavation. If provided in the Contract Documents, all additional excavation which becomes necessary shall be paid at the unit bid price for such work. The City reserves the right to contract with a separate contractor for the use of a soil stabilization process. No direct payment will be made for delays incurred due to this process and the Contractor's only compensation will be the allotment of additional days for the delay. The number of days shall be from the time the Contractor initially notifies the City of an unsuitable subgrade condition and until two days after the completion of the soil stabilization process.

### **13.05    Overhead and Profit from Changes in the Work**

The combined overhead and profit included in the total cost to the Owner for a change in the Work shall be based on the following schedule:

**13.05.1** For the Contractor, for Work performed by the Contractor's own forces, ten (10) percent of the cost.

**13.05.2** For the Contractor, for Work performed by the Contractor's Subcontractors, five (5) percent of the amount due the Subcontractors.

**13.05.3** For the Subcontractor involved, for Work performed by that Subcontractors own forces, ten (10) percent of the cost.

**13.05.4** For each Subcontractor involved, for Work performed by the Subcontractor's Sub-subcontractors, five (5) percent of the amount due the Sub-subcontractor.

**13.05.5** In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by an complete itemization of costs including labor, materials and Subcontracts. Where major cost items are Subcontracts, they shall be itemized also.

### **13.06 Altered Quantities**

**13.06.1** The City reserves the right to make changes in plan details which may vary the accepted quantities from those shown on the Bid Form.

**13.06.2** The Contractor shall accept, as payment in full, payment at the original Contract unit prices bid for the accepted quantities of work done. No allowance will be made for any increase expense or loss of expected profit suffered by the Contractor resulting directly from such altered quantities or indirectly from expense derived by handling small quantities of materials or performing operations within restricted areas. No allowance shall be made for any increased expense or loss of expected profit suffered because of the anticipated use of specific equipment which was not used.

## **SECTION 14 UNCOVERING AND CORRECTION OF WORK**

### **14.01 Uncovering of Work**

**14.01.1** If any Work should be covered contrary to the request of the City, it must, if required by the City, be uncovered for his observation and replaced, at the Contractor's expense.

**14.01.2** If any Work has been covered which the City has not specifically requested to observe prior to being covered, the City may request to see such Work and it shall be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents, the Cost of uncovering and replacement shall, by appropriate Change Order, be charged to the City. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay the costs of uncovering and replacement.

### **14.02 Correction of Work**

**14.02.1** The Contractor shall promptly correct all Work rejected by the City as defective or as failing to conform to the Contract Documents, whether observed before or after substantial completion of the Work, and whether or not fabricated, installed or completed. The Contractor shall bear all cost of correcting such rejected Work.

**14.02.2** If, within one year after the date of substantial completion or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any of the Work is found by the City to be defective or not in accordance with the Contract Documents, the Contractor shall correct it within 5 days after receipt of a written notice from the City. If the Contractor does not correct such deficiencies within that time, the City shall be entitled to specific performance from a court of equity or money damages in the amount of the reasonable cost of repairs, if adequate, provide that nothing shall limit the City's ability to draw upon the Performance and Maintenance Bond to correct such deficiencies. In all situations in which the City is forced to enforce the terms or specifications of the contract documents, the City shall be entitled to its reasonable attorneys' fees for enforcement of any provision of the contract documents.

**14.02.3** All such defective or non-conforming Work under Subparagraphs 12.2.1 and 12.2.2 shall be removed from the site if necessary, and the Work shall be corrected to comply with the Contract Documents without additional cost to the City.

**14.02.4** The Contractor shall bear the cost of making good all work of separate contractors destroyed or damaged by such removal or correction.

**14.02.5** In the alternative to Section 13.02.3, if the Contractor fails to correct such defective or non-conforming Work, the City may correct it in accordance with Section 3.03 hereof.

### **14.03 Acceptance of Defective or Non-Conforming Work**

**14.03.1** If the City prefers to accept defective or non-conforming Work, it may do so instead of requiring removal and correction, in which case a Change Order will be issued to reflect an appropriate reduction in the Contract sum, or if the amount is determined after final payment, it shall be paid by the Contractor.

## **SECTION 15 PURCHASE OF MATERIALS AND EQUIPMENT**

### **15.01 Sales Tax Provisions**

The City intends to take maximum advantage of the City's sales tax exemption status. The Contractor shall purchase construction materials and supplies in accordance with these Special Sales Tax Provisions. Compliance with these procedures is compulsory and for the benefit of the City. Accordingly, contractors shall not include sales tax in bid proposal amounts.

**15.01.1** The City shall furnish the Contractor a "Project Tax Exemption Certificate" which shall include the following:

**15.01.1.1** City's name, address, Missouri tax identification number and signature of authorized representative;

**15.01.1.2** The project location, description, and unique identification number;

**15.01.1.3** The date the City Contractor Agreement is entered into, which is the earliest date materials may be purchased for the project on a tax-exempt basis;

**15.01.1.4** The estimated date of completion for the Project;

**15.01.1.5** The Tax Exemption Certificate expiration date. Such certificate is renewable for a given project at the option of the City, only for the purpose of revising the certificate expiration date as necessary to complete the Project.

**15.01.2** Contractor shall:

**15.01.2.1** Furnish the Project Tax Exemption Certificate to all subcontractors. The Contractor and any subcontractor purchasing materials shall present, on behalf of the City, all tangible personal property and materials to be incorporated into or consumed in the construction of the Project and no other on a tax-exempt basis. Suppliers shall execute to the purchasing Contractor or Subcontractor invoices made out to the Contractor. The invoices must also bear the name of the City and the project identification number. Nothing in this section shall be deemed to exempt the purchase of any construction machinery, equipment, or tools used in constructing, repairing or remodeling facilities for the City. All invoices for all personal property and materials purchased for the Project utilizing the Project Tax Exemption Certificate shall be retained by the purchasing Contractor or subcontractor for a period of five (5) years and shall be subject to audit by the Missouri Director of Revenue.

**15.01.2.1.1** Any excess re-salable tangible personal property or materials which were purchased for the Project by the Contractor or subcontractor under the Project Tax Exemption Certificate but which were not incorporated into or consumed in the construction of the Project shall either be returned to the supplier for credit or the appropriate sales or use tax on such excess property or materials shall be paid by the Contractor or subcontractor not later than the due date on the Contractor or subcontractor's Missouri sales or use tax return following the month in which it was determined that the materials were not to be used in the Project.

**15.01.2.1.2** No Contractor, subcontractor or material supplier shall, upon audit, be required to pay tax on tangible personal property and materials incorporated into or consumed in the construction of the

Project, due to the failure of the City to revise the certificate expiration date as necessary to complete any work required. If it is determined that tax is owed on such property and materials due to the failure of the City to revise such certificate expiration date, the City shall be liable for the tax owed.

**15.01.2.2** Order all necessary materials and equipment to complete the Work and the Project in accordance with the Plans and Specifications.

**15.01.2.3** Inspect all delivered materials for conformance to specifications, damage, or breakage and subsequently accept materials if found to be satisfactory.

**15.01.2.3.1** Purchase of materials on behalf of the City shall not relieve the Contractor of obligations to order, schedule deliveries, inspect, accept, or reject, store, handle or install materials or perform any other duties required by the Contract Documents or customarily performed in conjunction with providing materials to complete the Work.

**15.01.2.3.2** Costs of complying with the foregoing Special Sales Tax Provisions shall be included in the Bid Proposal submitted and the Contractor shall not be entitled to receive additional compensation for such compliance.

## **15.02 Use of American Made Products.**

Any manufactured goods or commodities used or supplied in the performance of the Contract Documents or any subcontract thereto shall be manufactured or produced in the United States as required and in accordance with Section 34.353 RSMo.

**15.02.1** This section shall not apply when:

**15.02.1.1** The purchase, lease, or contract involves an expenditure of less than twenty-five thousand dollars;

**15.02.1.2** Only one line of a particular good or product is manufactured or produced in the United States;

**15.02.1.3** The specified products are not manufactured or produced in the United States in sufficient quantities to meet the City's requirements or cannot be manufactured or produced in the United States within the necessary time in sufficient quantities to meet the City's requirements;

**15.02.1.4** Obtaining the specified products manufactured or produced in the United States would increase the cost of the contract by more than ten percent.

**15.02.2** If this section shall not apply because of the circumstance described in Sections 14.06.4.1 to 14.06.4.4, then the Contractor shall provide the City with the information necessary to make the certifications required under Section 34.353 RSMo.

## **15.03 Missouri Preference**

Contractors are encouraged to purchase commodities and tangible property manufactured, produced, or grown within the local area and in the State of Missouri, and from all firms, corporations, or individuals with licensed businesses in the State of Missouri. This guideline pertains to all commodities and tangible property when quality is equal or better and the delivered price is the same or less, or when competing bids, in their entirety, are comparable.

## **SECTION 16 SPECIAL PROVISIONS**

### **16.01 Scheduling of Work and Interference with Traffic**

**16.01.1** The Contractor's work must be scheduled and accomplished in stages such that local traffic is maintained during construction. It shall be the Contractor's responsibility to provide a traffic way that is usable in all weather conditions. The Contractor shall construct and maintain in a safe condition temporary pavements and connections for local traffic.

**16.01.2** Suitable temporary barriers shall be provided to protect traffic from the Work if necessary. At all times until final acceptance of the Work, the Contractor shall provide and maintain such signs, lights, barriers, cones, watchmen or flaggers as may be necessary to properly protect the Work and provide for safe and convenient public travel. In the case of open excavations or other potentially hazardous conditions existing during non-working periods, the traveling public will be protected and advised by signs and flasher barricades. Parking of equipment or storage of materials on or near the Project site will be permitted only if adequate protective devices are provided and then only for the minimum time required for any specific job.

**16.01.3** No additional payment shall be made for temporary guardrail, barriers, signs, lights, or other work as may be necessary to maintain traffic and to protect the Work and the public and all labor, equipment and material necessary to accomplish this task shall be considered incidental.

### **16.02 Access**

**16.02.1** Areas of intersections and roadways within the construction limits shall be constructed in phases so that at no time will access be denied.

**16.02.2** Access to private driveways may be limited by the nature of the Work. The Contractor shall schedule his work such that at no time during the life of this Contract will any driveway be denied access for any reason other than the curing of concrete. All concrete, including curbs, sidewalks and driveway pavements, shall be formed and poured within a two calendar day period for each and every driveway. Excavation for this work shall be accomplished a maximum of one calendar day prior to forming, however, access shall be provided immediately after excavation. At the end of the curing period, access shall be immediately supplied using asphalt or compacted aggregate.

**16.02.3** All temporary materials used for access will be the responsibility of the Contractor and shall be included in his unit bid price for each related item. No separate payment will be made for the placement, maintenance or removal of said access.

**16.02.4** If said access is not supplied as set out above, the City will supply said access with its own forces, without notification to the Contractor, and will deduct such costs from the sums due the Contractor, notwithstanding any other provisions given this Contract. Wherever excavation affects pedestrian access to houses or public buildings, plank or other suitable bridges shall be placed at convenient intervals.

### **16.03 Construction Staking and Layout**

The Contractor shall be responsible for providing all labor, equipment and materials necessary for construction staking and layout as required, to the grades, elevations and alignment as determined by the City. No separate payment will be made for construction staking and layout. The Contractor shall make his bid accordingly. No payment shall be made for restaking except as expressly authorized due to changes made by the City during construction.

#### **16.04 Pre-Construction Conference**

A preconstruction conference may be held prior to the issuance of a notice to proceed with the Work. This meeting will be attended by the Contractor, the City, and representatives of the various utility companies that have facilities in the project area. The meeting date will be established after the taking of bids and at a time convenient to all parties.

#### **16.05 Sequence of Work**

**16.05.1** A schedule of the Contractor's work shall be submitted to the City for approval. It shall contain a listing of the order in which the Contract items will be constructed and the approximate dates for starting and finishing each Contract item.

**16.05.2** The Contractor shall furnish the City his proposed sequence and schedule for the completion of all work for its review and approval prior to the time of the preconstruction conference. The City shall have the right to specify the order of construction as deemed necessary.

**16.05.3** The Contractor shall update and provide the City of the revised schedule as necessary.

#### **16.06 Control of Materials**

**16.06.1** The Contractor shall collect all materials tickets to verify the quantity of each item. Material tickets shall be collected and provided to the City in their original form. Xerox or fax copies will not be accepted. All tickets shall be submitted on the day of delivery, either to the City personnel or the Public Works Office, or they shall not be accepted for payment.

**16.06.2** Contractors and subcontractors will be required to produce letters of certification or certified test reports from materials producers and suppliers in order to determine compliance with specifications for designated materials prior to the incorporation thereof into the work.

**16.06.3** The City will determine which materials are to be tested. The form and content of these test reports shall be in accordance with recognized standards and practices for this work or as otherwise determined by the City.

#### **16.07 Termination by the Owner for Cause**

**16.07.1** In addition to all other remedies available to the Owner, the Owner may terminate the Contract if the Contractor:

**16.07.1.1** Repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

**16.07.1.2** Fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

**16.07.1.3** Repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

**16.07.1.4** Otherwise is guilty of substantial breach of a provision of the Contract Documents.

**16.07.2** When any of the above reasons exists, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if



any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior right of the surety:

**16.07.2.1** Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

**16.07.2.2** Accept assignment of subcontracts; and

**16.07.2.3** Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**16.07.3** When the Owner terminates the Contract for cause, the Contractor shall not be entitled to receive further payment until the Work is finished.

**16.07.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for professional services (including architects and engineers) and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the project architect, upon application, and this obligation for payment shall survive termination of the Contract.

## **16.08 Termination by the Owner for Convenience**

**16.08.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

**16.08.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

**16.08.2.1** Cease operations as directed by the Owner in the notice;

**16.08.2.2** Take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

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

**16.08.3** In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and actual costs incurred by reason of such termination.