

# DIVISION 1

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## **1. DEFINITIONS**

- 1.1 Wherever used in the CONTRACT DOCUMENTS, the following terms shall have the meanings indicated and shall be applicable to both the singular and plural thereof, whether capitalized or not:
- 1.2 ADDENDA – Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the CONTRACT DOCUMENTS, DRAWINGS and SPECIFICATIONS, by additions, deletions, clarifications or corrections.
- 1.3 ASBESTOS – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
- 1.4 BID – The offer or proposal of the BIDDER submitted on the prescribed form setting forth the prices for the WORK to be performed.
- 1.5 BIDDER – Any person, firm or corporation submitting a BID for the WORK.
- 1.6 BONDS – Bid, Performance and Payment Bonds and other instruments of surety, furnished by the CONTRACTOR and the CONTRACTOR’S surety in accordance with the CONTRACT DOCUMENTS.
- 1.7 CHANGE ORDER – A written order to the CONTRACTOR authorizing an addition, deletion or revision in the WORK within the general scope of the CONTRACT DOCUMENTS, or authorizing an adjustment in the CONTRACT PRICE or CONTRACT TIME.
- 1.8 CITY – The City of Warrensburg, Missouri.
- 1.9 CONTRACT DOCUMENTS – The CONTRACT, including advertisements for BIDS, information for BIDDERS, BID, BID BOND, Agreement, General Conditions, SUPPLEMENTAL GENERAL CONDITIONS, Payment BOND, Performance BOND, NOTICE OF AWARD, NOTICE TO PROCEED, CHANGE ORDER, DRAWINGS, SPECIFICATIONS and ADDENDA.
- 1.10 CONTRACT PRICE – The total monies payable to the CONTRACTOR under the terms and conditions of the CONTRACT DOCUMENTS.
- 1.11 CONTRACT TIME – The number of calendar days stated in the CONTRACT DOCUMENTS for the completion of the WORK.
- 1.12 CONTRACTOR – The person, firm, or corporation with whom the CITY has executed the Agreement. CONTRACTOR shall be an independent contractor under this CONTRACT.

- 1.13 DRAWINGS – The parts of the CONTRACT DOCUMENTS which show the characteristics and scope of the WORK to be performed and which have been prepared or approved by the CITY.
- 1.14 HAZARDOUS ENVIRONMENTAL CONDITION – The presence at the SITE of ASBESTOS, HAZARDOUS WASTE, PCB's, PETROLEUM PRODUCTS or RADIOACTIVE MATERIALS in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto on connection with the WORK.
- 1.15 HAZARDOUS WASTE – The term HAZARDOUS WASTE shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
- 1.16 NOTICE OF AWARD – The written notice of the acceptance of the BID from the CITY to the successful BIDDER.
- 1.17 NOTICE TO PROCEED – Written communication issued by the CITY to the CONTRACTOR authorizing him/her to proceed with the WORK and establishing the date for commencement of the WORK.
- 1.18 PCBs – Polychlorinated biphenyl's.
- 1.19 PETROLEUM – Petroleum products, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes and oils.
- 1.20 PROCEED ORDER – A written order effecting a change in the WORK preliminary to a formal approval of a CHANGE ORDER, issued by the CITY or its representatives, that may allow the WORK to proceed for a reasonable period while a CHANGE ORDER is reviewed and approved.
- 1.21 PROJECT – The undertaking to be performed as provided in the CONTRACT DOCUMENTS.
- 1.22 RADIOACTIVE MATERIAL – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
- 1.23 REQUEST FOR INTERPRETATION - Request from CONTRACTOR seeking interpretation or clarification of the CONTRACT DOCUMENTS from CITY or its engineers.

- 1.24 REQUEST FOR PROPOSAL – A request to the CONTRACTOR by CITY to submit a proposal for changes in the WORK based upon a defined scope of work and a specified method of pricing.
- 1.25 SHOP DRAWINGS – All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the CONTRACTOR, a SUBCONTRACTOR, manufacturer, SUPPLIER or distributor, which illustrate how specific portions of the WORK shall be fabricated or installed.
- 1.26 SITE – Lands or other areas designated in the CONTRACT DOCUMENTS as being furnished by the CITY upon which construction is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by CITY which are designated for use of CONTRACTOR.
- 1.27 SPECIFICATIONS – A part of the CONTRACT DOCUMENTS consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.
- 1.28 SUBCONTRACTOR – An individual, firm or corporation having a direct CONTRACT with CONTRACTOR or with any SUBCONTRACTOR for the performance of a part of the WORK at the site.
- 1.29 SUPPLIER – Any person or organization who supplies materials or equipment for the WORK, including that fabricated to a special design, but who does not perform labor at the site.
- 1.30 WORK – All labor necessary to produce the construction required by the CONTRACT DOCUMENTS, and all materials and equipment incorporated or to be incorporated in the PROJECT.
- 1.31 WRITTEN NOTICE – Any notice to any party of the Agreement relative to any part of this Agreement in writing and considered delivered and the service thereof completed, when posted by certified or registered mail to the said party at their last given address, or delivered in person to said party or their authorized representative on the WORK.

## **2. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS**

- 2.1 The CONTRACTOR may be furnished additional instructions and detail drawings, by the CITY, as deemed necessary by the CITY to carry out the WORK required by the CONTRACT DOCUMENTS.
- 2.2 The additional drawings and instructions thus supplied will become a part of the CONTRACT DRAWINGS. The CONTRACTOR shall carry out the WORK in accordance with the additional detail drawings and instructions.

### **3. SCHEDULES, DOCUMENTS AND REPORTS**

- 3.1 The CONTRACTOR shall submit to the CITY such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data where applicable as are required by the CONTRACT DOCUMENTS for the WORK to be performed.
- 3.2 CONTRACTOR shall meet regularly with CITY in order to maintain schedules for the WORK and to provide coordination with the CITY and others.

### **4. DRAWINGS AND SPECIFICATIONS**

- 4.1 The intent of the DRAWINGS and SPECIFICATIONS is that the CONTRACTOR shall furnish all labor, materials, tools, equipment and transportation necessary for the proper execution of the WORK in accordance with the CONTRACT DOCUMENTS and all incidental WORK necessary to complete the PROJECT in an acceptable manner, ready for use, occupancy or operation by the CITY.
- 4.2 In case of conflict between the DRAWINGS and SPECIFICATIONS, the SPECIFICATIONS shall govern. Figure dimensions on DRAWINGS shall govern over general DRAWINGS.
- 4.3 Any discrepancies found between the DRAWINGS and SPECIFICATIONS and site conditions or any inconsistencies or ambiguities in the DRAWINGS or SPECIFICATIONS shall be immediately reported to the CITY in writing, who shall promptly correct such inconsistencies or ambiguities in writing. WORK done by the CONTRACTOR after discovery of such discrepancies, inconsistencies or ambiguities shall be done at the CONTRACTOR'S risk.

### **5. SHOP DRAWINGS AND SUBMITTALS**

- 5.1 The CONTRACTOR shall provide SHOP DRAWINGS as may be necessary for the prosecution of the WORK as required by the CONTRACT DOCUMENTS. The CITY shall promptly review all SHOP DRAWINGS. The CITY'S approval of any SHOP DRAWING shall not release the CONTRACTOR from responsibility for deviations from the CONTRACT DOCUMENTS. The approval of any SHOP DRAWING which substantially deviates from the requirement of the CONTRACT DOCUMENTS shall be evidenced by a CHANGE ORDER.
- 5.2 When submitted for the CITY'S review, SHOP DRAWINGS shall bear the CONTRACTOR'S certification that he has reviewed, checked and approved the SHOP DRAWINGS and that they are in conformance with the requirements of the CONTRACT DOCUMENTS.
- 5.3 Portions of the WORK requiring a SHOP DRAWING or sample submission shall not begin until the SHOP DRAWING or submission has been approved by the CITY. A copy of each approved SHOP DRAWING and each approved sample

shall be kept in good order by the CONTRACTOR at the SITE and shall be available to the CITY.

## **6. MATERIALS, SERVICES AND FACILITIES**

- 6.1 It is understood that, except as otherwise specifically stated in the CONTRACT DOCUMENTS, the CONTRACTOR shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete and deliver the WORK within the specified time.
- 6.2 Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the WORK. Stored materials and equipment to be incorporated in the WORK shall be located so as to facilitate prompt inspection.
- 6.3 Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.
- 6.4 Materials, supplies and equipment shall be in accordance with samples submitted by the CONTRACTOR and approved by the CITY.
- 6.5 Materials, supplies or equipment to be incorporated into the WORK shall not be purchased by the CONTRACTOR or the SUBCONTRACTOR subject to a chattel mortgage or under a conditional sale CONTRACT or other agreement by which an interest is retained by the seller.

## **7. INSPECTION AND TESTING**

- 7.1 All materials and equipment used in the construction of the PROJECT shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the CONTRACT DOCUMENTS.
- 7.2 The CITY shall provide all inspection and testing services not required by the CONTRACT DOCUMENTS.
- 7.3 The CONTRACTOR shall provide at the CONTRACTOR'S expense the testing and inspection services required by the CONTRACT DOCUMENTS.
- 7.4 If the CONTRACT DOCUMENTS, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any WORK to specifically be inspected, tested or approved by someone other than the CONTRACTOR, the CONTRACTOR will give the CITY timely notice of readiness. The CONTRACTOR will then furnish the CITY the required certificates of inspection, testing or approval.

- 7.5 Inspections, tests or approvals by the CITY or others shall not relieve the CONTRACTOR from the obligations to perform the WORK in accordance with the requirements of the CONTRACT DOCUMENTS.
- 7.6 The CITY will at all times have access to the WORK. In addition, authorized representatives and agents of any participating Federal or State agency shall be permitted to inspect all WORK, materials, payrolls, records or personnel, invoices of materials and other relevant data and records. The CONTRACTOR will provide proper facilities for such access and observation of the WORK and also for any inspection or testing thereof.
- 7.7 If any WORK is covered contrary to the written instructions of the CITY it must, if required by the CITY, be uncovered for the CITY'S observation and replaced at the CONTRACTOR'S expense.
- 7.8 If the CITY considers it necessary or advisable that covered WORK be inspected or tested by others, the CONTRACTOR, at the CITY'S request, will uncover, expose or otherwise make available for observation, inspection or testing as the CITY may require, that portion of the WORK in question, furnishing all necessary labor, materials, tools and equipment. If it is found that such WORK is defective, the CONTRACTOR will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, if, however such WORK is not found to be defective, the CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate CHANGE ORDER shall be issued.
- 7.9 Any WORK not in compliance with this CONTRACT or the highest standards of workmanship may be rejected by CITY and CONTRACTOR shall replace it in compliance with Section 16 below.

## **8. SUBSTITUTIONS**

- 8.1 Whenever a material, article or piece of equipment is identified on the DRAWINGS and SPECIFICATIONS by reference to brand name or catalog numbers, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The CONTRACTOR may recommend the substitution of a material, article or piece of equipment of equal substance and function for those referred to in the CONTRACT DOCUMENTS by reference to brand name or catalog number, and if, in the opinion of the CITY, such materials, article or piece of equipment is of equal substance and function to the specified, the CITY may approve its substitution and use by the CONTRACTOR. Any cost differential shall be deductible from the CONTRACTOR PRICE and the CONTRACT DOCUMENTS shall be appropriately modified by CHANGE ORDER. The CONTRACTOR warrants that if substitutes are approved, no major changes in the function or general design of

the PROJECT will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the CONTRACTOR without a change in the CONTRACT PRICE or CONTRACT TIME.

8.2 All materials utilized in the WORK shall be new materials.

## **9. PATENTS**

9.1 The CONTRACTOR shall pay all applicable royalties and license fees, and shall defend all suits or claims for infringement of any patent rights and save the CITY harmless from loss on account thereof, except that the CITY shall be responsible for any such loss when a particular process, design, or product of a particular manufacturer or manufacturers is specified, however, if the CONTRACTOR has reason to believe that the design, process or product specified is an infringement of a patent, the CONTRACTOR shall be responsible for such loss unless the CONTRACTOR promptly gives such information to the CITY.

## **10. SURVEYS, PERMITS, REGULATIONS**

10.1 The CITY shall furnish all boundary surveys and establish all base lines for locating the principal component parts of the WORK together with a suitable number of bench marks adjacent to the WORK as shown in the CONTRACT DOCUMENTS. From the information provided by the CITY, unless otherwise specified in the CONTRACT DOCUMENTS, the CONTRACTOR shall develop and make all detail surveys needed for construction such as slope stakes, batter boards, stakes for pipe locations and other working points, lines, elevations and cut sheets.

10.2 The CONTRACTOR shall carefully preserve bench marks, reference points, monuments and stakes of CITY and all other parties maintaining the same within the area of the WORK and, in case of willful or careless destruction, shall be charged with the resulting expense and shall be responsible for any mistake that may be caused by their unnecessary loss or disturbance.

10.3 Permits and licenses of a temporary nature necessary for the prosecution of the WORK shall be secured and paid for the by the CONTRACTOR unless otherwise stated. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the CITY, unless otherwise specified. The CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the WORK as drawn and specified. If the CONTRACTOR observes that the CONTRACT DOCUMENTS are at variance therewith, the CONTRACTOR shall promptly notify the CITY in writing, and any necessary changes shall be adjusted as provided in Section 13, CHANGES IN THE WORK.

10.4 CONTRACTOR shall abide by all restrictions and covenants applicable to the easements within which the WORK will be performed, and shall hold CITY harmless for any failure to do so.

## **11. PROTECTION OF WORK, PROPERTY AND PERSONS**

11.1 The CONTRACTOR will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the WORK. The CONTRACTOR will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the WORK and other persons who may be affected thereby, all the WORK and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The CONTRACTOR shall comply with all pertinent provisions of the Occupational Safety and Health Administration (OSHA) and any State Safety and Health agency requirements. The Contractor shall also comply with any Master Safety Plan adopted by the City.

11.2 The CONTRACTOR will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. The CONTRACTOR will erect and maintain, as required by the conditions and progress of the WORK, all necessary safeguards for safety and protection. The CONTRACTOR will notify CITY of adjacent utilities when prosecution of the WORK may affect them. The CONTRACTOR will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or part, by the CONTRACTOR, any SUBCONTRACTOR or any person directly or indirectly employed by any of them or anyone of whose acts any of them may be liable, except damage or loss attributable to the fault of the CITY, or anyone employed by the CITY or anyone for whose acts the CITY may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the CONTRACTOR.

11.3 In emergencies affecting the safety of persons or the WORK or property at the site or adjacent thereto, the CONTRACTOR, without special instructions or authorization from the CITY, shall act to prevent threatened damage, injury or loss. The CONTRACTOR will give the CITY prompt WRITTEN NOTICE of any significant changes in the WORK or deviations from the CONTRACT DOCUMENTS caused thereby, and a CHANGE ORDER shall thereupon be issued covering the changes and deviations involved.

11.4 CONTRACTOR shall indemnify and hold harmless the City and its officials, agents and employees from all costs and liabilities incurred as a result of CONTRACTOR'S failure, or failure of its employees, agents or SUBCONTRACTORS, to comply with Section 285.530 RSMo regarding unauthorized aliens, Section 208.009 RSMo regarding contracts with public

entities, Section 292.675 RSMo regarding OSHA training for Public Works, to the extent the same are applicable during the term of this CONTRACT. Attached hereto are certifications of compliance required.

- 11.5 All CONTRACTORS entering into contracts for public works shall require all employees on the work site to complete ten hours of training pursuant to Section 292.675 RSMo within sixty days of beginning work on the project, AFTER August 28, 2009.

Any CONTRACTOR violating the training requirements of Section 292.675 RSMo shall forfeit as a penalty to the public body on whose behalf the contract is made the sum of \$2,500.00 plus \$100.00 for each violating employee, per day. These penalties shall accrue on expiration of the time limits set forth in Sections 292.675.2 and 292.675.3 RSMo.

All sums due for such forfeiture and penalty shall be withheld from payments owed under the Contract. No payment otherwise due shall be made during any term of uncorrected violations of Section 292.675 RSMo and no interest or penalties shall accrue on any such unpaid payment.

- 11.6 The CONTRACTOR is aware of the provisions of the Overhead Power Line Safety Act, 319.075 to 319.090 RSMo, and agrees to comply with the provisions thereof. CONTRACTOR understands that it is their duty to notify any utility operating high voltage overhead lines and make appropriate arrangements with said utility if the performance of contract would cause any activity by CONTRACTOR or any other party within ten feet of any high voltage overhead line. To the fullest extent permitted by law, CONTRACTOR shall indemnify, hold harmless and defend the CITY, its officers, agents, and employees from and against all claims, damages, losses and expenses (including but not limited to attorney's fees) arising by reason of any act or failure to act, negligent or otherwise, of CONTRACTOR, of any SUBCONTRACTOR (meaning anyone, including but not limited to consultants having a contract with CONTRACTOR or a subcontract for part of the services), of anyone directly or indirectly employed by CONTRACTOR or by any SUBCONTRACTOR, or of anyone for whose acts the CONTRACTOR or its SUBCONTRACTOR may be liable, in connection with any claims arising under the Overhead Power Line Safety Act.

CONTRACTOR expressly waives any action for Contribution against the CITY on behalf of the CONTRACTOR, any SUBCONTRACTOR (meaning anyone, including but not limited to consultants having a contract with CONTRACTOR or a subcontract for part of the services), anyone directly or indirectly employed by CONTRACTOR or by any SUBCONTRACTOR, or of anyone for whose acts the CONTRACTOR or its SUBCONTRACTOR may be liable, and the insurers for those parties, and agrees to provide a copy of this waiver to any of party affected by this provision.

## **12. HAZARDOUS ENVIRONMENTAL CONDITION AT SITE**

- 12.1 CONTRACTOR will not be responsible for any HAZARDOUS ENVIRONMENTAL CONDITION encountered at the SITE which was not identified in the CONTRACT DOCUMENTS to be within the scope of the WORK. CONTRACTOR will be responsible for materials creating a HAZARDOUS ENVIRONMENTAL CONDITION created by any materials brought to the SITE by CONTRACTOR, SUBCONTRACTORS, SUPPLIERS or anyone else for whom CONTRACTOR is responsible.
- 12.2 If CONTRACTOR encounters a HAZARDOUS ENVIRONMENTAL CONDITION, CONTRACTOR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all construction in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 11.3); and (iii) notify CITY (and thereafter confirm such notice in writing). CITY shall promptly determine the necessity of retaining a qualified expert to evaluate such condition or take corrective action, if any.
- 12.3 CONTRACTOR shall not be required to resume construction in connection with such HAZARDOUS ENVIRONMENTAL CONDITION or in any such affected area until after CITY has obtained any required permits related thereto and delivered to CONTRACTOR written notice (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of construction, or (ii) specifying any special conditions under which such construction may be resumed safely. If CITY and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in CONTRACT PRICE or CONTRACT TIMES as a result of such construction stoppage or such special conditions under which construction is agreed to be resumed by CONTRACTOR, either party may make a claim therefore as provided in the CONTRACT DOCUMENTS.
- 12.4 If after receipt of such special written notice CONTRACTOR does not agree to resume construction based on a reasonable belief it is unsafe, or does not agree to resume such construction under such special conditions, then CITY may order such portion of the WORK that is related to such HAZARDOUS ENVIRONMENTAL CONDITION to be deleted from the WORK. If CITY and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in CONTRACT PRICE or CONTRACT TIMES as a result of deleting such portion of the WORK, then either party may make a claim therefore as provided in the CONTRACT DOCUMENTS. CITY may have such deleted portion of the WORK performed by CITY's own forces or others in accordance with Article 18.
- 12.5 To the fullest extent permitted by law, CONTRACTOR shall indemnify and hold harmless CITY, CITY's consultants and the officers, directors, partners, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including but not

limited to all fees and charges for engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from such HAZARDOUS ENVIRONMENTAL CONDITION created by CONTRACTOR or anyone for whom CONTRACTOR is responsible. Nothing in this paragraph shall obligate CONTRACTOR to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

### **13. SUPERVISION BY CONTRACTOR**

- 13.1 The CONTRACTOR will supervise and direct the WORK. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The CONTRACTOR will employ and maintain on the WORK a qualified supervisor or superintendent who shall have been designated in writing by the CONTRACTOR or the CONTRACTOR'S representative at the site. The supervisor shall have full authority to act on behalf of the CONTRACTOR and all communications given to the supervisor shall be as binding as if given to the CONTRACTOR. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the WORK.
- 13.2 During the progress of the WORK, the CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the WORK. At the completion of the WORK the CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by the CITY. The CONTRACTOR shall restore to original condition all property not designated for alteration by the CONTRACT DOCUMENT.
- 13.3 The CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall the CONTRACTOR subject any part of the WORK or adjacent property to stresses or pressures that will endanger it.
- 13.4 The CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the WORK. The CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
- A. all employees on the WORK and other persons and organizations who may be affected thereby;
  - B. all the WORK and materials and equipment to be incorporated therein, whether in storage on or off the site; and
  - C. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation or replacement in the course of construction.

13.5 The CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. The CONTRACTOR shall notify owners of adjacent property and of underground facilities and utility owners when prosecution of the WORK may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. The CONTRACTOR shall also notify Missouri One Call and the CITY when doing any underground work. All damage, injury or loss to any property referred to in these paragraphs caused, directly or indirectly, in whole or in part, by the CONTRACTOR, any SUBCONTRACTOR, SUPPLIER or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the WORK or anyone for whose acts any of them may be liable, shall be remedied by the CONTRACTOR. The CONTRACTOR'S duties and responsibilities for the safety and protection of the WORK shall continue until such time as all the WORK is completed and the CITY has issued a notice to the CONTRACTOR that the WORK is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

#### **14. CHANGES IN THE WORK**

14.1 The CITY may at any time, as the need arises, order changes within the scope of the WORK without invalidating the Agreement. If such changes increase or decrease the amount due under the CONTRACT DOCUMENTS, or in the time required for performance of the WORK, an equitable adjustment shall be authorized by CHANGE ORDER. CHANGE ORDER shall be used to adjust quantities of installed units which are different than those shown in the BID SCHEDULE because of final measurements. Final measurements shall not be considered changes in the WORK. Final measurements will determine compensation to the CONTRACTOR based on unit price shown in BID SCHEDULE.

14.2 The CITY, also, may at any time, by issuing a PROCEED ORDER, make changes in the details of the WORK pending approval by the CITY of a CHANGE ORDER. The CONTRACTOR shall proceed with the performance of any changes in the WORK so ordered by the CITY.

14.3 All CHANGE ORDERS shall be completed in the form attached to these GENERAL CONDITIONS.

14.4 No bond issued to comply with CONTRACTOR'S responsibilities shall be conditioned upon receipt of notice of any change order or proceed orders.

14.5 No additional, different or extra work completed by CONTRACTOR shall be compensated without a CHANGE ORDER or PROCEED ORDER, except in case of emergency. In no event will CONTRACTOR's charges for work under a

PROCEED ORDER or CHANGE ORDER include more than ten percent (10%) for overhead or profit without the express written consent of CITY in advance.

## **15. CHANGES IN CONTRACT PRICE**

- 15.1 The CONTRACT PRICE may be changed only by a CHANGE ORDER. The value of any WORK covered by a CHANGE ORDER or any claim for increase or decrease in the CONTRACT PRICE shall be determined by one or more of the following methods in the order of precedence listed below.
- A. Unit prices previously approved
  - B. An agreed lump sum
  - C. Time and material basis

## **16. TIME FOR COMPLETION AND LIQUIDATED DAMAGES**

- 16.1 The date of beginning and the time for completion of the WORK are essential conditions of the CONTRACT DOCUMENTS and the WORK embraced shall be commenced on a date specified in the NOTICE TO PROCEED.
- 16.2 The CONTRACTOR will proceed with the WORK at such rate of progress to insure full completion within the CONTRACT TIME. It is expressly understood and agreed, by and between the CONTRACTOR and the CITY, that the CONTRACT TIME for the completion of the WORK described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the WORK.
- 16.3 If the CONTRACTOR shall fail to complete the WORK within the CONTRACT TIME, or extension of time granted by the CITY, then the CONTRACTOR will pay to the CITY five hundred dollars (\$500.00) for each calendar day that the CONTRACTOR shall be in default after the time stipulated in the CONTRACT DOCUMENTS.
- 16.4 The CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the WORK is due to the following and the CONTRACTOR has promptly given WRITTEN NOTICE of such delay to the CITY:
- A. To any preference, priority or allocation order duly issued by the CITY.
  - B. To unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including but not restricted to, acts of God, or of the public enemy, acts of the CITY, acts of another CONTRACTOR in the performance of a CONTRACT with the CITY, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and abnormal and unforeseeable weather; and

C. To any delays of SUBCONTRACTORS occasioned by any of the causes specified in paragraphs 16.4.A and 16.4.B of this article.

16.5 Except as otherwise approved by CITY in writing, all work hereunder shall occur between the hours of 7:00 a.m. and 6:00 p.m. on Monday through Friday, or such other hours as are specified by the CITY in writing, or required by any easements for the WORK.

## **17. CORRECTION OF WORK**

17.1 The CONTRACTOR shall promptly remove from the premises all WORK rejected by the CITY for failure to comply with the CONTRACT DOCUMENTS, whether incorporated in the construction or not, and the CONTRACTOR shall promptly replace and re-execute the WORK in accordance with the CONTRACT DOCUMENTS and without expense to the CITY and shall bear the expense of making good all WORK of other CONTRACTORS destroyed or damaged by such removal or replacement.

17.2 All removal and replacement WORK shall be done at the CONTRACTOR'S expense. If the CONTRACTOR does not take action to remove such rejected WORK within ten (10) days after receipt of WRITTEN NOTICE, the CITY may remove such WORK and store the materials at the expense of the CONTRACTOR.

## **18. SUBSURFACE CONDITIONS**

18.1 The CONTRACTOR, before bidding the PROJECT, has the responsibility to become familiar with the site of the PROJECT and the conditions under which WORK will have to be performed during the construction period.

18.2 The CONTRACTOR shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify the CITY by WRITTEN NOTICE of:

A. Subsurface or latent physical conditions at the site differing materially from those indicated in the CONTRACT DOCUMENTS; or

B. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in WORK of the character provided for in the CONTRACT DOCUMENTS.

C. The CITY shall promptly investigate the conditions, and SUBJECT TO section 18.3.A below, if it is found that such conditions do so materially differ and cause an increase or decrease in the cost of, or in the time required for, performance of the WORK, an equitable adjustment shall be made and the CONTRACT DOCUMENTS shall be modified by CHANGE ORDER. Any claim of the CONTRACTOR for adjustment hereinafter shall

not be allowed unless the required WRITTEN NOTICE has been given; provided that the CITY may, if the CITY determines the facts so justify, consider and adjust any such claims asserted before the date of the final payment.

- D. The CITY shall promptly investigate the conditions, and if it is found that such conditions do so materially differ and cause an increase or decrease in the cost of, or in the time required for, performance of the WORK, an equitable adjustment shall be made and the CONTRACT DOCUMENTS shall be modified by CHANGE ORDER. Any claim of the CONTRACTOR for adjustment hereinafter shall not be allowed unless the required WRITTEN NOTICE has been given; provided that the CITY may, if the CITY determines the facts so justify, consider and adjust any such claims asserted before the date of the final payment.

18.3 CONTRACTOR shall notify the Missouri Call Center (“One-Call”) prior to excavating for the location of below-surface structures: water mains, sewers, power and telephone cables and other types of below surface structures. CONTRACTOR shall be responsible for locating and safeguarding all underground facilities prior to any excavation.

- A. No extra compensation will be paid for rock excavation or varying geologic features encountered on the PROJECT, unless so shown as a bid item in the Bid Schedule for the bid.
- B. If man-made hazards are encountered by the CONTRACTOR, excluding utilities, which are not visible from the surface, such as buried concrete foundations, buried garbage dumps, that cannot be by-passed and requires additional work, then the procedure set for the in 17.2.D will be followed.

## **19. SUSPENSION OF WORK, TERMINATION AND DELAY**

19.1 The CITY may suspend the WORK or any portion thereof for a period of not more than ninety days or such further time as agreed upon by the CONTRACTOR, by WRITTEN NOTICE to the CONTRACTOR which 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 increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to any suspension.

19.2 If the CONTRACTOR is adjudged to be bankrupt or insolvent, or makes a general assignment for the benefit of its creditors, or if a trustee or receiver is appointed for the CONTRACTOR or for any of its property, or if CONTRACTOR files a petition to take advantage of any debtor’s act, or to reorganize under the bankruptcy or applicable laws, or fails to supply sufficient skilled workmen or suitable materials or equipment, or fails to make prompt payments to

SUBCONTRACTORS or for labor, materials or equipment or disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the WORK or disregards the authority of the CITY, or otherwise violates any provision of the CONTRACT DOCUMENTS, then the CITY may, without prejudice to any other right or remedy and after giving the CONTRACTOR and its surety a minimum of ten (10) days from delivery of a WRITTEN NOTICE, terminate the services of the CONTRACTOR and take possession of the PROJECT and of all materials, equipment, tools, construction equipment and machinery thereon owned by the CONTRACTOR and finish the WORK by whatever method the CITY may deem expedient. In such case the CONTRACTOR shall not be entitled to receive any further payment until the WORK is finished. If the unpaid balance of the CONTRACT PRICE exceeds the direct and indirect costs of completing the PROJECT, including compensation for additional professional services, such excess SHALL BE PAID TO THE CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR will pay the difference to the CITY. Such costs incurred by the CITY will be determined by the CITY and incorporated in a CHANGE ORDER.

- 19.3 Where the CONTRACTOR'S services have been so terminated by the CITY, said termination shall not affect any right of the CITY against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of monies by the CITY due the CONTRACTOR will not release the CONTRACTOR from compliance with the CONTRACT DOCUMENTS.
- 19.4 After ten (10) days from the delivery of WRITTEN NOTICE to the CONTRACTOR and the CITY, the CITY may, without cause and without prejudice to any other right or remedy, elect to abandon the PROJECT and terminate the CONTRACT. In such case the CONTRACTOR shall be paid for all WORK executed and any expense sustained plus reasonable profit. During this ten days, CONTRACTOR shall not increase work on the PROJECT or order additional materials for use in the PROJECT.
- 19.5 If, through no act or fault of the CONTRACTOR, the WORK is suspended for a period of more than ninety (90) days by the CITY or under an order of court or other public authority, or the CITY fails to act on any request for payment within thirty (30) days after it is submitted, or the CITY fails to pay the CONTRACTOR substantially the sum approved by the CITY within thirty (30) days of its approval and presentation, then the CONTRACTOR may, after ten (10) days from the delivery of a WRITTEN NOTICE to the CITY terminate the CONTRACT and recover from the CITY payment for all WORK executed and all expenses sustained. In addition and in lieu of terminating the CONTRACT, if the CITY has failed to act on a request for payment of if the CITY has failed to make any payment as aforesaid, the CONTRACTOR may upon ten (10) days written notice to the CITY stop the WORK until paid all amounts then due, in which event and upon resumption of the WORK, CHANGE ORDERS shall be issued for adjusting

the CONTRACT price or extending the CONTRACT TIME or both to compensate for the costs and delays attributable to the stoppage of the WORK.

- 19.6 If the performance of all or any portion of the WORK is suspended, delayed, or interrupted as a result of a failure of the CITY to act within the time specified in the CONTRACT DOCUMENTS, or if no time is specified, within a reasonable time, an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, shall be made by CHANGE ORDER to compensate the CONTRACTOR for the costs and delays necessarily caused by the failure of the CITY.
- 19.7 The CITY, without terminating the service of the CONTRACTOR or WRITTEN NOTICE to the Surety, may withhold on account of subsequently discovered evidence, nullify the whole or part of any approved partial payment estimate to such extent as may be necessary to protect itself from loss on account of: defective work not remedied, claims filed or reasonable evidence indication probable filing of claims, failure of CONTRACTOR to make payments properly to SUBCONTRACTORS or for material or labor, a reasonable doubt that the WORK can be completed for the balance then unpaid, damage to another CONTRACTOR and performance of WORK in violation of the terms of the CONTRACT DOCUMENTS, or a reasonable belief that the CONTRACTOR will fail to complete the WORK within the CONTRACT TIME and liquidated damages will be properly withheld.

## **20. PAYMENT TO CONTRACTOR**

- 20.1 The CONTRACTOR will submit to the CITY a payment request based upon the Schedule of Values filled out and signed by the CONTRACTOR covering the WORK performed and supported by such data as the CITY may reasonably require by the 15<sup>th</sup> day of each month. The CITY will, within thirty (30) days after receipt of the payment estimate, or by the next regular city council meeting of CITY, whichever is later, either indicate in writing approval of payment or return the payment estimate to the CONTRACTOR indicating in writing the reasons for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the payment estimate. The CITY will, within thirty (30) days of presentation of an approved payment estimate, pay the CONTRACTOR the approved payment request, less a retainage of ten percent (10%) of the payment, or such greater sum as may be required under Section 18.7.
- 20.2 Prior to completion and acceptance of the WORK, the CITY, with the concurrence of the CONTRACTOR, may use any completed or substantially complete portions of the WORK. Such use shall not constitute an acceptance of such portions of the WORK.
- 20.3 The CITY shall have the right to enter the premises for the purpose of doing WORK not covered by the CONTRACT DOCUMENTS. This provision shall not

be construed as relieving the CONTRACTOR of the sole responsibility for the care and protection of the WORK, or the restoration of any damaged WORK except such as may be caused by agents or employees of the CITY.

- 20.4 Upon completion and acceptance of the WORK, the CITY shall issue a certificate attached to the final payment request that the WORK has been accepted under the conditions of the CONTRACT DOCUMENTS. The entire balance found to be due the CONTRACTORS, including the retained percentages, but except such sums as may be lawfully retained by the CITY, shall be paid to the CONTRACTOR within thirty (30) days of completion and acceptance of the WORK.
- 20.5 The CONTRACTOR will indemnify and save the CITY harmless from all claims growing out of the lawful demand of SUBCONTRACTORS, laborers, workmen, mechanics, materialmen and furnishers of machinery and parts thereof, equipment, tools and all supplies incurred in the furtherance of the performance of the WORK. The CONTRACTOR shall, at the CITY'S request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the CONTRACTOR fails to do so the CITY may, after having notified the CONTRACTOR, either pay unpaid bills or withhold from the CONTRACTOR'S unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the CONTRACTOR shall be resumed in accordance with the terms of the CONTRACT DOCUMENTS, but in no event shall the provisions of this sentence be construed to impose any obligations upon the CITY to either the CONTRACTOR, the CONTRACTOR'S Surety, or any third party. In paying any unpaid bills of the CONTRACTOR, any payment so made by the CITY shall be considered as a payment made under the CONTRACT DOCUMENTS by the CITY to the CONTRACTOR and the CITY shall not be liable to the CONTRACTOR for any such payments made in good faith.
- 20.6 If the CITY fails to make payment thirty (30) days after approval, in addition to other remedies available to the CONTRACTOR, there shall be added to each such payment interest commencing on the first day after said payment is due and continuing until the payment is received by the CONTRACTOR. The legal rate of interest shall be as specified in RSMo 408.020.
- 20.7 It is expressly a condition precedent to any payment being made that CONTRACTOR shall be in compliance with all terms of the CONTRACT DOCUMENTS and shall have provided at least the following to the CITY:
- A. List of subcontractors.
  - B. Schedule of Values.
  - C. Contractor's Construction Schedule (preliminary if not final).
  - D. Schedule of unit prices.

- E. Submittals Schedule (preliminary if not final).
- F. List of Contractor's staff assignments.
- G. List of Contractor's principal consultants.
- H. Copies of building permits.
- I. Copies of authorizations and licenses from authorities having jurisdiction for performance of the Work.
- J. Initial progress report.
- K. Report of preconstruction conference.
- L. Performance, Payment, and Maintenance Bonds
- M. Certificates of insurance and insurance policies.
- N. Copies of Contractor's Safety Plan.

20.8 It is expressly a condition precedent to any final payment being made that CONTRACTOR shall be in compliance with all terms of the CONTRACT DOCUMENTS and shall have provided at least the following to the CITY:

- A. Evidence of completion of Project closeout requirements.
- B. Insurance certificates for products and completed operations where required and proof that taxes, fees, and similar obligations were paid.
- C. Updated final statement, accounting for final changes to the Contract Sum.
- D. Completion of all affidavits concerning prevailing wages
- E. Evidence that claims have been settled.
- F. Final meter readings for utilities and similar data as of date of Substantial Completion or when CITY took possession of and assumed responsibility for corresponding elements of the WORK.
- G. Final, liquidated damages settlement statement.
- H. Complete affidavit concerning compliance with Prevailing Wage requirements.

## **21. ACCEPTANCE OF FINAL PAYMENT AS RELEASE**

21.1 The acceptance by the CONTRACTOR of final payment shall be and shall operate as a release of the CITY of all claims and all liability to the CONTRACTOR other than claims in stated amounts as may be specifically excepted by the CONTRACTOR for all things done or furnished in connection with this WORK and for every act and neglect of the CITY and others relating to or arising out of this WORK. Any payment, however final or otherwise, shall not release the CONTRACTOR or its sureties from any obligations under the CONTRACT DOCUMENTS or the Performance, Payment, BONDS or maintenance.

## **22. INSURANCE**

22.1 The CONTRACTOR shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of, or result from the CONTRACTOR'S execution of the WORK, whether such execution be by the

CONTRACTOR, 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:

- A. Claims under workmen's compensation, disability benefit and other similar employee benefit acts in amounts required by law;
- B. Claims for damages because of bodily injury, occupational sickness or disease, or death of employees in the amounts required by law;
- C. Claims for damages because of bodily injury, sickness or disease, or death of any person other than employees in the amount of at least \$376,378.00 per person and \$2,509,186.00 per occurrence, or such greater amount as is required by Section 537.600 RSMo as annually adjusted;
- D. Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the CONTRACTOR, or (2) by any other person; and

22.2 Certificates of Insurance acceptable to the CITY shall be filed with the CITY prior to commencement of the WORK. These Certificates shall contain a provision that coverages afforded under the policies will not be cancelled unless at least fifteen (15) days prior WRITTEN NOTICE has been given to the CITY, and shall name CITY as an additional insured by endorsement.

22.3 The CONTRACTOR shall procure and maintain, at the CONTRACTOR'S own expense, during the CONTRACT time, liability insurance as hereinafter specified:

- A. Where the WORK to be performed under the CONTRACT DOCUMENTS involves excavation or other underground WORK or construction, the Property Damage Insurance provided shall cover all injury to or destruction of property below the surface of the ground, such as wires, conduits, pipes, mains, sewers, etc., caused by the CONTRACTOR'S operations, Property Damage Insurance shall also cover the collapse of, or structural injury to, any buildings or structure on or adjacent to the CITY'S premises, or the injury to or destruction of property resulting therefrom, caused by the removal of other buildings, structures, or supports, or by excavations below the ground where the construction of a new structure or the demolition of an existing structure involves any of the foregoing designated hazards and in all cases where the CONTRACT provides for alternations in, additions to, or the underpinning of an existing structure or structures. Before any blasting will be permitted, the CONTRACTOR shall be required to obtain a Blasting Endorsement on his Public Liability and Property Damage Insurance Policy

- B. The CONTRACTOR shall secure CONTRACTOR'S Contingent or Protective Liability AND Property Damage to protect the CONTRACTOR from any and all claims arising from the operations of SUBCONTRACTOR employed by the CONTRACTOR. The minimum amounts of such insurance shall be as required for Public Liability and Property Damage Insurance.
  - C. The CONTRACTOR shall maintain Automobile Public Liability and Property Damage Insurance to protect the CONTRACTOR from any and all claims arising from the use of the following in the execution of the WORK: a) CONTRACTOR'S own automobiles and trucks. b) Hired automobiles and trucks. c) Automobiles and trucks not owned by the CONTRACTOR. The insurance shall cover the use of the automobiles and trucks both on and off the site of the PROJECT. The minimum amounts of such insurance shall be the same as required for Public Liability and Property Damage Insurance.
- 22.4 The CONTRACTOR shall procure and maintain, at the CONTRACTOR'S own expense during the CONTRACT TIME, in accordance with the provisions of the laws of the state in which the WORK is performed, Workmen's Compensation Insurance, including occupational disease provisions, for all the CONTRACTOR'S employees at the site of the PROJECT and in case any WORK is sublet, the CONTRACTOR shall require such SUBCONTRACTOR similarly to provide Workmen's Compensation Insurance, including occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. In case any class of employees engaged in hazardous WORK under this CONTRACT at the site of the project is not protected under Workmen's Compensation statute, the CONTRACTOR shall provide, and shall cause each SUBCONTRACTOR to provide, adequate and suitable insurance for the protection of its employees not otherwise protected.
- 22.5 The CONTRACTOR shall secure, if applicable, "All Risk" type Builder's Risk Insurance for WORK to be performed. Unless specifically authorized by the CITY, the amount of such insurance shall not be less than the CONTRACT PRICE totaled in the BID. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft and smoke during the CONTRACT TIME, and until the WORK is accepted by the CITY. The policy shall name as the insured, as their interests may appear, the CITY, CONTRACTOR, and SUBCONTRACTORS. This provision shall in no way release the CONTRACTOR or CONTRACTOR'S surety from obligations under the CONTRACT DOCUMENTS to fully complete the PROJECT. Any proceeds paid to the CITY or other party under such policy shall be held and used by the party to replace the part of the WORK which has been damaged.

- 22.6 Any insured loss under the policies of insurance required by Paragraphs 22.5 will be adjusted with CITY and made payable to CITY as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 22.7. CITY shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached the damaged WORK shall be repaired or replaced, the moneys so received applied on account thereof and the WORK and the cost thereof covered by an appropriate CHANGE ORDER.
- 22.7 CITY as fiduciary shall have the power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to CITY's exercise of this power. If such object be made, CITY as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, CITY as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, CITY as fiduciary shall give bond for the proper performance of such duties.

### **23. CONTRACT SECURITY**

- 23.1 The CONTRACTOR shall within fifteen (15) days after the receipt of the NOTICE OF AWARD furnish the CITY with a Performance BOND and a Payment BOND in penal sums equal to the amount of the CONTRACT PRICE, conditioned upon the performance by the CONTRACTOR of all undertakings, covenants, terms, conditions and agreements of the CONTRACT DOCUMENTS, and upon the prompt payment by the CONTRACTOR to all persons supplying labor and materials in the prosecution of the WORK provided by the CONTRACT DOCUMENTS. Such BONDS shall be executed by the CONTRACTOR and a corporate bonding company licensed to transact such business in the state in which the WORK is to be performed and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular Number 570. The expense of these BONDS shall be borne by the CONTRACTOR. If at any time a surety on any such BOND is declared a bankrupt or loses its right to do business in the state in which the WORK is to be performed or is removed from the list of Surety Companies accepted on Federal Bonds, CONTRACTOR shall within ten (10) days after notice from the CITY to do so, substitute an acceptable BOND (or BONDS) in such form and sum and signed by such other surety or sureties as may be satisfactory to the CITY. The premiums on such BOND shall be paid by the CONTRACTOR. No further payment shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable BOND to the CITY.
- 23.2 CONTRACTOR shall provide a maintenance bond for the WORK in the amount of the CONTRACT PRICE to guaranty that the WORK shall be free from defects for a period of one year from final payment.

## **24. ASSIGNMENTS**

- 24.1 Neither the CONTRACTOR nor the CITY shall sell, transfer, assign, or otherwise dispose of the CONTRACT or any portion thereof, or of any right, title or interest therein, or any obligations thereunder, without written consent of the other party.

## **25. INDEMNIFICATION**

- 25.1 The CONTRACTOR will indemnify and hold harmless the CITY and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the WORK, provided that any such claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom; and is caused in whole or in part by any negligent or willful act or omission of the CONTRACTOR, and SUBCONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.
- 25.2 In any and all claims against the CITY or employees, by any employee of the CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any SUBCONTRACTOR under workmen's compensation acts, disability benefit acts or other employee benefits act.
- 25.3 The obligation of the CONTRACTOR under this paragraph shall not extend to the liability of the CITY or employees arising out of the preparation or approval of maps, DRAWINGS, opinions, reports, surveys, CHANGE ORDERS, designs or SPECIFICATIONS.

## **26. SEPARATE CONTRACTS**

- 26.1 The CITY reserves the right to let other CONTRACTS in connection with this PROJECT. The CONTRACTOR shall afford other CONTRACTORS reasonable opportunity for the introduction and storage of their materials and the execution of their WORK, and shall properly connect and coordinate the WORK with theirs. If the proper execution or results of any part of the CONTRACTOR'S WORK depends upon the WORK, of any other CONTRACTOR, the CONTRACTOR shall inspect and promptly report to the CITY any defects in such WORK that render it unsuitable for such proper execution and results.
- 26.2 The CITY may perform additional WORK related to the PROJECT or the CITY may let other CONTRACTS containing provisions similar to these. The CONTRACTOR will afford the other CONTRACTORS who are parties to such CONTRACTS (or the CITY, if the CITY is performing the additional WORK) reasonable opportunity for the introduction and storage of materials and

equipment and the execution of WORK, and shall properly connect and coordinate the WORK with theirs.

- 26.3 If the performance of additional WORK by other CONTRACTORS or the CITY is not noted in the CONTRACT DOCUMENTS prior to the execution of the CONTRACT, written notice thereof shall be given to the CONTRACTOR prior to starting any such additional WORK. If the CONTRACTOR believes that the performance of such additional WORK by the CITY or others involves it in additional expense or entitles it to any extension of the CONTRACT TIME, the CONTRACTOR may make a claim thereof as provided in Sections 14 and 15.

## **27. SUBCONTRACTING**

- 27.1 The CONTRACTOR may utilize the services of specialty SUBCONTRACTS on those parts of the WORK which, under normal contracting practices, are performed by specialty SUBCONTRACTORS.
- 27.2 The CONTRACTOR shall be fully responsible to the CITY for the acts and omissions of its SUBCONTRACTORS, and of persons either directly or indirectly employed by them, as the CONTRACTOR is for the acts and omissions of persons directly employed by it.
- 27.3 The CONTRACTOR shall cause appropriate provisions to be inserted in all SUBCONTRACTS relative to the WORK to bind SUBCONTRACTORS to the CONTRACTOR by the terms of the CONTRACT DOCUMENTS insofar as applicable to the WORK of SUBCONTRACTORS and give the CONTRACTOR the same power as regards terminating any SUBCONTRACT that the CITY may exercise over the CONTRACTOR under any provision of the CONTRACT DOCUMENTS.
- 27.4 Nothing contained in the CONTRACT shall create any contractual relation between any SUBCONTRACTOR and the CITY.
- 27.5 Only SUBCONTRACTORS or SUPPLIERS specified in the bid may be utilized without CITY'S prior approval.
- 27.6 CONTRACTOR shall be responsible for all work and materials supplied by any SUBCONTRACTOR or SUPPLIER and to guarantee that such work complies with the CONTRACT DOCUMENTS.

## **28. CITY'S AUTHORITY**

- 28.1 The CITY shall decide questions which may arise as the quality and acceptability of materials furnished and WORK performed, and shall interpret the intent of the CONTRACT DOCUMENTS in a fair and unbiased manner. The CITY will make visits to the site and determine if the WORK is proceeding in accordance with the CONTRACT DOCUMENTS.

- 28.2 The CONTRACTOR will be held strictly to the intent of the CONTRACT DOCUMENTS in regard to the quality of materials, workmanship, and execution of the WORK. Inspections may be at the factor or fabrication plant of the source of the material supply.
- 28.3 The CITY will not be responsible for the construction means, controls, techniques, sequences, procedures or construction safety.
- 28.4 The CITY shall promptly make decisions relative to interpretation of the CONTRACT DOCUMENTS.

## **29. LAND AND RIGHT-OF-WAY**

- 29.1 Prior to issuance of NOTICE TO PROCEED, the CITY shall obtain all land and rights-of-way necessary for carrying out and for the completion of the WORK to be performed pursuant to the CONTRACT DOCUMENTS, unless otherwise mutually agreed.
- 29.2 The CITY shall provide to the CONTRACTOR information which delineates and describes the lands owned and right-of-way acquired.
- 29.3 The CONTRACTOR shall provide at its own expense and without liability to the CITY any additional land and access thereto that the CONTRACTOR may desire for temporary construction facilities, or for storage of materials.

## **30. GUARANTEE**

- 30.1 The CONTRACTOR shall guarantee installation of all materials (regardless of their source) and WORK performed for a period of one (1) year from the date of completion and acceptance of the WORK. The CONTRACTOR warrants and guarantees for a period of one (1) year from the date of completion and acceptance of the WORK that the completed WORK is free from all defects due to faulty materials or workmanship and the CONTRACTOR shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any other damages that were caused by defects in the WORK. The CITY will give notice of observed defects with reasonable promptness. In the event that the CONTRACTOR should fail to make such repairs, adjustments, or other WORK that may be made necessary by such defects, the CITY may do so and charge the CONTRACTOR the cost thereby incurred. In emergency where, in the judgment of the CITY, delay would cause serious loss or damage, repairs and replacement of defects in the WORK and damage caused by defects may be made without notice being sent to the CONTRACTOR, and the CONTRACTOR shall pay the cost thereof. The Performance BOND shall remain in full force and effect through the guarantee period, or a separate maintenance BOND approved by the CITY.

## **31. REMEDIES**

- 31.1 Except as may be otherwise found in the CONTRACT DOCUMENTS, all claims, disputes, counter-claims, and other matters in question between the CITY and CONTRACTOR arising out of or related to this AGREEMENT or the breach thereof, will be decided by any dispute resolution method mutually agreed upon, or in the absence of mutual agreement in the Circuit Court of Johnson County, Missouri.

## **32. TAXES**

- 32.1 The CONTRACTOR will pay all sales, consumer, use and other similar taxes required by the laws of the place where the WORK is performed.
- 32.2 A Missouri Sales Tax Exemption is provided for by Missouri State Statutes 144.062, effective August 28, 1994, which allows for a sales tax exception to contractors construction, repairing or remodeling facilities or purchasing personal property and materials to be incorporated into and consumed in the construction of projects for a tax exempt entity. The CITY shall furnish an exemption certificate for purchases in the construction, repair or remodeling project, to each CONTRACTOR and/or SUBCONTRACTOR.

## **33. GENERAL PROVISIONS**

- 33.1 No waiver of any provision of this AGREEMENT will be deemed or constitute a waiver of any other provision, nor will it be deemed to constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both CITY and CONTRACTOR; nor will the waiver of any defect under this AGREEMENT be deemed a waiver of any subsequent default or defaults of the same type. The CITY'S failure to exercise any right under this AGREEMENT will not constitute the approval of any wrongful act by the CITY or the acceptance of any public improvement.
- 33.2 The parties to this AGREEMENT may amend or modify this AGREEMENT only by written instrument duly executed by the parties hereto.
- 33.3 No person or entity who or which is not a party to this AGREEMENT will have any right of action under this AGREEMENT.
- 33.4 If any part, term, or provision of this AGREEMENT is held by a court to illegal or otherwise unenforceable will not effect the validity of any other part, term, or provision, and the rights of the parties will be construed as if the part, term, or provision was never part of this AGREEMENT.
- 33.5 Any notice required or permitted by this AGREEMENT will be deemed effective when personally delivered in writing or three (3) days after notice is deposited

with the U.S. Postal Service, postage prepaid, certified, and return receipt requested and addressed as follows:

CITY:	COMPANY:
City Manager	_____
City of Warrensburg	_____
102 South Holden Street	_____
Warrensburg, Missouri 64093	_____

- 33.6 Personal jurisdiction and venue for any civil action commenced by either party to this AGREEMENT shall be deemed to be proper only if such action is commenced in the Circuit Court of Johnson County, Missouri. The CONTRACTOR expressly waives its rights to bring such action in or to remove such action to any other court whether state or federal.
- 33.7 This AGREEMENT shall be construed in accordance with and governed by the laws of the State of Missouri.

**34. PREVAILING WAGE**

- 34.1 The CONTRACTOR shall comply with all requirements of the prevailing wage law of Missouri, Revised Statutes of Missouri, Sections 290.210 to 290.340, including the latest amendments thereto.
- 34.2 The CONTRACTOR and each SUBCONTRACTOR shall keep an accurate record showing names, occupations, and crafts of all workers employed, together with the number of hours worked by each worker and the actual wages paid to each worker. At all reasonable hours, such records shall be open to inspection by representatives of the Labor & Industrial Relations Commission and the City. The payroll records shall not be destroyed or removed from the State for at least one (1) year after completion of the WORK. CONTRACTORS and SUBCONTRACTORS will submit certified copies of their payrolls to the City prior to contract acceptance.
- 34.3 Throughout the life of this CONTRACT, a copy of the wage determination and the rules promulgated by the Labor & Industrial Relations Commission of Missouri shall be displayed in at least four (4) conspicuous places on the project under a heading of NOTICE with the heading in letters at least one inch (1") high.
- 34.4 Pursuant to Section 290.250 RSMo, the CONTRACTOR shall forfeit to the CITY as a penalty, ten dollars (\$10.00) for each worker employed, for each calendar day, or portion thereof, such worker is paid less than the stipulated rates for any work done under the CONTRACT, by them or by any SUBCONTRACTOR under them.
- 34.5 After compliance of the work and before final payment can be made under this CONTRACT, the CONTRACTOR and each SUBCONTRACTOR must file with

the City an affidavit stating that they have fully complied with the provisions and requirements of the prevailing wage law of Missouri, Section 290.210 to 290.340 RSMo.

- 34.6 During the life of this CONTRACT, the prevailing hourly rate of wages is subject to change by the Labor and Industrial Relations Commission or by court decision, as provided by law. Any such change shall not be the basis of any claim by the CONTRACTOR against the CITY, nor will deductions be made by the CITY against sums due the CONTRACTOR by reason of such changes. The following prevailing wage rate determination made by the Division of Labor Standards, Labor & Industrial Relations Commission, is reproduced verbatim and is applicable to this CONTRACT.

### **35. CONTRACT COMPLETION AND CLOSEOUT**

- 35.1 Upon the WORK being substantially complete, CONTRACTOR shall notify CITY of this status and request CITY to provide its inspection and report of punchlist items to achieve final completion.
- 35.2 Upon substantial completion, final payment may be made to CONTRACTOR, less any retainage withheld pursuant to the CONTRACT DOCUMENTS to correct CONTRACTOR'S lack of compliance or the final punchlist items.
- 35.3 Upon substantial completion, CONTRACTOR shall submit the following:
- A. a complete list of values of completed work per the BID or any CHANGE ORDERS;
  - B. a list of incomplete items;
  - C. a list of pending insurance change over requirements;
  - D. copies of all warranties, bonds, manuals or similar documents related to the WORK or any materials utilized;
  - E. proof of payment to all SUBCONTRACTORS and SUPPLIERS;
  - F. proof of compliance with prevailing wage requirements;
  - G. proof of final SITE clean up, and
  - H. final requests for progress payment upon substantial completion.
- 35.4 In order for final acceptance and closeout to occur and for final payment to be made, the following shall occur:
- A. all punchlist items shall be complete and accepted by CITY;
  - B. an updated and final schedule of values and payments for the WORK shall be submitted by CONTRACTOR;
  - C. submit a copy of all drawings and plans utilized in the PROJECT with all variations or changes made in the field marked thereon;
  - D. complete all final cleaning of the WORK, and
  - E. submit request for final payment.