

CITY OF ST JOSEPH

REQUEST FOR PROPOSAL

NO RFP2020-25

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Proposals Must Be Received No
Later Than

Time: 4:00PM Date: 4/23/2020

For Information Contact

Purchasing

at (816) 271-5330

This document constitutes a request for sealed bids, including prices, from qualified individuals and organizations to furnish those services and/or items as described herein.

Proposals must be mailed or delivered to the Division of Purchasing, 1100 Frederick Avenue Room 201, St. Joseph, MO 64501.

Truck Storage Building

This form must be completed, signed and returned with the proposal.

Please have the Bid Name and Number on the outside of the sealed proposals.

The offeror must provide all information required in this document pursuant to the specifications attached and included herein.

The offeror hereby agrees to provide the services and/or items at the prices quoted, pursuant to the attached terms and conditions of Request for Proposal or Invitation to Bidders and Terms and Conditions of Purchase, and further agrees that when this document is countersigned by an authorized official of the City of St. Joseph, a binding contract, as defined herein, shall exist between the offeror and the City of St. Joseph.

SIGNATURE REQUIRED

Offeror's Signature: _____ Offeror's Printed Name: _____ Title : _____

Company Name: _____ Date of Proposal: _____

Mailing Address: _____ Telephone: _____

City: _____ State: _____ Zip: _____

Email Address: _____

Social Security or Federal Tax No _____

NOTICE OF AWARD (This section for City of St. Joseph use only)

Requisition No. _____

This proposal is accepted by the City of St. Joseph as follows:

Purchase Order _____

Buyer

Purchasing Agent

Date

City of St. Joseph, Mo. (WPLM) Truck Storage Building

The scope of work for the City of St. Joseph Truck Storage Building Construction Project shall include, but is not limited to the following:

- Proposal must include the cost of one (1) 60' x 112' x 16' to the eave, Clear Span Pre-engineered wood/steel building package including all labor, equipment, materials, and permits to furnish, deliver, construct and install a wood/steel hybrid building, designed to meet building code specifications for the City of St. Joseph, Mo.

There will not be a pre-bid meeting held on this project. Questions regarding the request, or appointments to view the site may be made to Jackson Jones at 816-271-4848 or jjones@stjoemo.org.

Frame:

- Steel clear span
- Bolt anchored to foundation

Roof:

- Sheeting to be a minimum 29 gauge with 80,000 # tensile strength, with purlins on a maximum of 24" centers, with 18" overhangs

Siding and Trim Material:

All panels to be a minimum 29-gauge pro-panel steel sheets, secured with matching colored wood grip screws with rubber bonded washers. Square base angle at bottom of sheet, eave trim, weather tight closure strips at ridge-cap and eave. All door jambs to have colored steel jamb trim. (choice of standard color by Superintendent of Streets & Infrastructure).

Gutters:

5" pre-finished metal gutters with 4" downspouts located at each corner. All gutters to be surfaced drained at this time.

Insulation:

Reflective EPS core insulation board or equivalent to address radiant conduction and convection heat loss/gains

Exterior Doors:

(2) each insulated white steel emergency exit door.

Overhead Doors:

(11) each 12' wide x 14' high metal clad insulated overhead door units mounted on standard track with electric openers.

Warranty:

- Minimum 40-year warranty certification on steel components

Contractor's Responsibilities:

- Provide Stamped Engineered plans per above specs
- Provide Stamped Engineered plans for the building pad and foundation
- Provide Workman's Compensation, General Liability, and Automobile Insurance Policy according to the General Conditions of the Contract for Construction
- Provide a Performance & Maintenance Bond and a Contractor's Payment Bond
- Have or obtain a current business license allowing operation inside the city limits of St. Joseph Mo.
- Obtain any required permits

Owner's Responsibilities:

Provide level building pad, all permit fees, Fill and Concrete.

To the extent that this description/scope of work calls for specific materials manufactured by specific providers, bidders may submit bids which include alternate materials manufactured by providers not named above, only to the extent that such alternate materials and alternate providers are comparable, in the Superintendent of Streets and Infrastructure discretion, and each bid must specify the alternate materials/providers proposed within the submitted bid response.

Each bidder shall provide in their bid response, the following:**BID SUBMITTAL**

1. Bid bond or certified check in an amount equal to 5% of the bid.
2. Total detailed cost to complete the job in its entirety.
3. A complete list of all subcontractors and their addresses.
4. Current completed W-9 form

Bid submittals should be delivered, in a sealed envelope, clearly marked with the RFP Name and Number no later than **April 22, 2020, by 4:00 P.M.** to the following address:

City of St. Joseph
Purchasing Agent
1100 Frederick Avenue, Rm 201
St. Joseph, Missouri 64501

ST. JOSEPH, MISSOURI
DEPARTMENT OF PUBLIC WORKS
TRUCK & EQUIPMENT STORAGE BUILDING

BID# RFP2020-24

BID BOND

KNOW ALL MEN BY THESE PRESENTS: That we, _____ of
_____, as Principal, and _____
_____ of _____,

a surety company authorized to do business and execute bonds in the State of Missouri, as Surety, are held and firmly bound unto the City of St. Joseph, Missouri, hereinafter defined as Obligee, in the penal sum of

_____ Dollars (\$ _____), for which payment said Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents.

The condition of the above obligation is such that whereas the Principal has submitted to Obligee, a certain bid, in a separate envelope, and hereby made a part hereof, to enter into a Contract in writing for:

TRUCK & EQUIPMENT STORAGE BUILDING

The work will generally consist of the installation of a wood and steel hybrid building to store trucks and equipment for the Water Protection Line Maintenance Division of Public Works.

NOW THEREFORE, Bidder and Surety jointly and severally agree to bind themselves, their heirs, executors, administrators, successors and assigns to pay to City upon default of Bidder the penal sum set forth on the face of the Bond and subject to the following terms and conditions:

1. Default of Bidder may, at the discretion of City, be deemed to have occurred upon the failure of Bidder to deliver within the time required by the Bidding Documents the executed Contract for Construction required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents and Contract Documents.

1. This obligation shall be null and void if:

- a. City accepts Bidder's bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by City) the executed Contract for Construction required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents and Contract Documents, or
- b. All bids are rejected by City, or
- c. City fails to issue a notice of award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by paragraph 4 hereof).

2. Payment under this Bond will be due and payable upon default of Bidder and within 10 calendar days after receipt by Bidder and Surety of written notice of default from City.

3. Surety waives notice of and any and all defenses based on or arising out of any time extension to issue notice of award agreed to in writing by City and Bidder, provided that the time for issuing notice of award including extensions shall not in the aggregate exceed 120 days from the opening of Bids without Surety's written consent.

4. No suit or action shall be commenced under this Bond prior to 10 calendar days after the notice of default required in paragraph 3 above is received by Bidder and Surety.

5. Notice required hereunder shall be in writing and sent to both Bidder and Surety at their respective addresses shown on the face of this Bond and shall be deemed to be effective upon receipt by the party concerned.

6. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent or representative who executed this Bond on behalf of Surety to execute, seal and deliver such Bond and bind the Surety thereby.

7. This Bond is intended to conform to all applicable laws. Any applicable requirement of any applicable law that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of the Bond conflicts with any applicable provision of any applicable law, then the provisions of said laws shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.

Signed and sealed this _____ day of _____, 20_____.

Principal

By _____
Contractor's Signature

Surety

By _____
Attorney-in-Fact

Missouri

Division of Labor Standards

WAGE AND HOUR SECTION



MICHAEL L. PARSON, Governor

Annual Wage Order No. 26

Section 011
BUCHANAN COUNTY

In accordance with Section 290.262 RSMo 2000, within thirty (30) days after a certified copy of this Annual Wage Order has been filed with the Secretary of State as indicated below, any person who may be affected by this Annual Wage Order may object by filing an objection in triplicate with the Labor and Industrial Relations Commission, P.O. Box 599, Jefferson City, MO 65102-0599. Such objections must set forth in writing the specific grounds of objection. Each objection shall certify that a copy has been furnished to the Division of Labor Standards, P.O. Box 449, Jefferson City, MO 65102-0449 pursuant to 8 CSR 20-5.010(1). A certified copy of the Annual Wage Order has been filed with the Secretary of State of Missouri.

Original Signed by

Taylor Burks, Director
Division of Labor Standards

Filed With Secretary of State: _____ **March 8, 2019**

Last Date Objections May Be Filed: **April 8, 2019**

Prepared by Missouri Department of Labor and Industrial Relations

Building Construction Rates for
BUCHANAN County

Section 011

OCCUPATIONAL TITLE	** Date of Increase	Basic Hourly Rates
Asbestos Worker		\$62.56
Boilermaker		\$25.64*
Bricklayer		\$52.19
Carpenter		\$50.42
Lather		
Linoleum Layer		
Millwright		
Pile Driver		
Cement Mason		\$51.16
Plasterer		
Communications Technician		\$25.64*
Electrician (Inside Wireman)		\$48.08
Electrician Outside Lineman		\$25.64*
Lineman Operator		
Lineman - Tree Trimmer		
Groundman		
Groundman - Tree Trimmer		
Elevator Constructor		\$25.64*
Glazier		\$25.64*
Ironworker		\$62.95
Laborer		\$39.06
General Laborer		
First Semi-Skilled		
Second Semi-Skilled		
Mason		\$48.74
Marble Mason		
Marble Finisher		
Terrazzo Worker		
Terrazzo Finisher		
Tile Setter		
Tile Finisher		
Operating Engineer		\$55.14
Group I		
Group II		
Group III		
Group III-A		
Group IV		
Group V		
Painter		\$38.30
Plumber		\$59.99
Pipe Fitter		
Rofer		\$45.45
Sheet Metal Worker		\$61.69
Sprinkler Fitter		\$25.64*
Truck Driver		\$25.64*
Truck Control Service Driver		
Group I		
Group II		
Group III		
Group IV		

*The Division of Labor Standards received less than 1,000 reportable hours as required by RSMo 290.257.4(b). Public works contracting minimum wage is established for this occupational title using data provided by Missouri Economic Research and Information Center, in accordance with RSMo 290.257.2.

Heavy Construction Rates for
BUCHANAN County

Section 011

OCCUPATIONAL TITLE	** Date of Increase	Basic Hourly Rates
Carpenter		\$25.64*
Millwright		
Pile Driver		
Electrician (Outside Lineman)		\$25.64*
Lineman Operator		
Lineman - Tree Trimmer		
Groundman		
Groundman - Tree Trimmer		
Laborer		\$40.19
General Laborer		
Skilled Laborer		
Operating Engineer		\$51.83
Group I		
Group II		
Group III		
Group IV		
Truck Driver		\$25.64*
Truck Control Service Driver		
Group I		
Group II		
Group III		
Group IV		

Use Heavy Construction Rates on Highway and Heavy construction in accordance with the classifications of construction work established in 8 CSR 30-3.040(3).

Use Building Construction Rates on Building construction in accordance with the classifications of construction work established in 8 CSR 30-3.040(2).

If a worker is performing work on a heavy construction project within an occupational title that is not listed on the Heavy Construction Rate Sheet, use the rate for that occupational title as shown on the Building Construction Rate Sheet.

*The Division of Labor Standards received less than 1,000 reportable hours as required by RSMo 290.257.4(b). Public works contracting minimum wage is established for this occupational title using data provided by Missouri Economic Research and Information Center, in accordance with RSMo 290.257.2.

OVERTIME and HOLIDAYS

OVERTIME

For all work performed on a Sunday or a holiday, not less than twice (2x) the prevailing hourly rate of wages for work of a similar character in the locality in which the work is performed or the public works contracting minimum wage, whichever is applicable, shall be paid to all workers employed by or on behalf of any public body engaged in the construction of public works, exclusive of maintenance work.

For all overtime work performed, not less than one and one-half (1½) the prevailing hourly rate of wages for work of a similar character in the locality in which the work is performed or the public works contracting minimum wage, whichever is applicable, shall be paid to all workers employed by or on behalf of any public body engaged in the construction of public works, exclusive of maintenance work or contractual obligation. For purposes of this subdivision, "**overtime work**" shall include work that exceeds ten hours in one day and work in excess of forty hours in one calendar week; and

A thirty-minute lunch period on each calendar day shall be allowed for each worker on a public works project, provided that such time shall not be considered as time worked.

HOLIDAYS

January first;
The last Monday in May;
July fourth;
The first Monday in September;
November eleventh;
The fourth Thursday in November; and
December twenty-fifth;

If any holiday falls on a Sunday, the following Monday shall be considered a holiday.

CONTRACT FOR CONSTRUCTION-LUMP SUM

THIS CONTRACT FOR CONSTRUCTION (this "Contract") is made and entered into and is effective on this ____ day of _____, 20____, by and between the City of St. Joseph, Missouri, a municipality, ("City"), and _____ having a place of business located at _____("Contractor").

WHEREAS, the City has caused to be prepared specifications, plans and other Contract Documents for the Work herein described, and has approved and adopted the Contract Documents defined herein and has invited proposals for furnishing materials, labor, and equipment for, and in connection with, the construction of improvements in accordance with the terms of the Contract Documents; and

WHEREAS, the Contractor, in response to the invitation, has submitted to the City in the manner and at the time specified, a proposal in accordance with the terms of the Contract Documents; and

WHEREAS, the City has opened, examined, and canvassed the proposals submitted and as a result of such canvass, has determined and declared the Contractor to be the lowest and best bidder for constructing said improvements, and has duly awarded to said Contractor this Contract.

The City and Contractor, in consideration of the mutual covenants herein set forth, agree as follows:

ARTICLE 1 WORK

TRUCK & EQUIPMENT STORAGE BUILDING

The work will generally consist of installing a wood and steel hybrid building to store trucks and equipment for the Water Protection Line Maintenance Division of Public Works.

Contractor, at his own cost and expense, will provide all labor, tools, equipment and materials required to complete all Work specified or indicated in the Contract Documents or reasonably inferable by the Contractor therefrom as necessary to produce the results intended by the Contract Documents.

ARTICLE 2 DESIGN PROFESSIONAL

The Project has been designed by Department of Public Works & Transportation, Engineering Division, who is referred to in the Contract Documents as the Design Professional. Design Professional, and its duly authorized agents, are to act as the City's representative, assume all duties and responsibilities, and have the rights and authorities assigned to Design Professional in the Contract Documents in connection with completion of the Work, in accordance with the Contract Documents.

ARTICLE 3
CONTRACT TIME AND COMPLETION

3.1 The date of commencement is the date from which the Contract Time(s) of Paragraph 3.2 is measured and shall be fixed in a written notice to proceed issued by the City.

3.2 The Contractor shall achieve Substantial and Final Completion of the entire Work, and if set forth below, the various designated stages of the Work, not later than:

Substantial Completion: NA

Final Completion: Sixty (60) Days from the Notice to Proceed

3.3 Time is of the essence to the Contract Documents and all obligations thereunder. The Contractor acknowledges and recognizes that (1) the City is entitled to full and beneficial occupancy and use of the completed Work following expiration of the Contract Time(s) and (2) the City will sustain damages if the Contract Time(s) are not met by Contractor. The Contractor further acknowledges and agrees that if the Contractor fails to achieve Substantial Completion of the entire Work or any phase of the Work within the Contract Time(s), the City will sustain extensive damages and serious loss as a result of such failure. The exact amount of such damages will be extremely difficult to ascertain. Therefore, the City and the Contractor agree as follows in this Paragraph 3.3:

- (a) If Contractor shall neglect, refuse or fail to complete remaining Work or designated portions within the Contract Time(s), as set forth in Paragraph 3.2 and as otherwise required by the Contract Documents, the City shall be entitled to retain or recover from Contractor, as liquidated damages and not as a penalty, the following per diem amounts commencing upon the first day following expiration of the Contract Time(s) and continuing until the actual Date(s) of Substantial Completion:

No Dollars (\$0.00) Per Day

- (b) After Substantial Completion, if Contractor shall neglect, refuse or fail to complete remaining Work within the Contract Time(s), Contractor shall pay the City One Hundred Dollars (\$100.00) Per day, for each day that expires after the time specified in Paragraph 3.2 for final completion of the Work of phases of the Work.
- (c) All such liquidated damages referred to in this Paragraph 3.3 are hereby agreed to be a reasonable pre-estimate of damages the City will incur as a result of delayed completion of the Work or phases of the Work. The City may deduct liquidated damages described in Paragraph 3.3 from any unpaid amounts then or thereafter due the Contractor under this Agreement. Any liquidated damages not so deducted from any unpaid amounts due the Contractor shall be payable to the City at the demand of the City, together with interest from the date of the demand at a rate of one and one-half percent (1.5%) per month.

ARTICLE 4
CONTRACT SUM

4.1 City shall pay Contractor for the Work in accordance with the Contract Documents the total sum of _____ Dollars and ____ Cents (\$0.00).

ARTICLE 5
PAYMENTS

5.1 Contractor shall submit Applications for Payment on account of the Contract Sum in accordance with the General Conditions of the Contract for Construction. The City shall make progress payments and final payment in accordance with the General Conditions of the Contract for Construction. In the event that the Missouri Department of Labor and Industrial Relations has determined that a violation of R.S.Mo. 292.675 has occurred and that a penalty as described in Article 7, section 7.5 of this Agreement shall be assessed, the City shall withhold and retain all sums and amounts due and owing when making payments to Contractor under this Contract.

ARTICLE 6
CONTRACTOR'S REPRESENTATIONS

In order to induce the City to enter into this Agreement, Contractor makes the following representations:

6.1 Contractor has examined and carefully studied the Contract Documents (including the Addenda listed in Article 7) and the other related data identified in the Bidding Documents including "technical data."

6.2 Contractor has visited the site and become familiar with and satisfied itself as to the general, local, and site conditions that may affect cost, progress, performance, or furnishing of the Work.

6.3 Contractor is familiar with and has satisfied itself as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.

6.4 Contractor has been provided any and all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site. Contractor acknowledges that such reports and drawings are not Contract Documents. A list of such reports and drawings are attached hereto as Exhibit A. Contractor acknowledges that the City and Design Professional do not assume responsibility for the accuracy or completeness of such information. Contractor also acknowledges that the City and Design Professional do not assume responsibility for the accuracy or completeness of data shown or indicated in the Contract Documents with respect to underground facilities or utilities at or contiguous to the site, and Contractor shall not be entitled to rely on the accuracy or completeness of such data. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and underground facilities and utilities) at or contiguous to the site or otherwise which may affect cost, progress, performance, or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the performance and furnishing of the Work at the Contract Sum, within the Contract Time(s), and in accordance with the other terms and conditions of the Contract Documents.

6.5 Contractor is aware of the general nature of work to be performed by the City and others at the site that relates to the Work as indicated in the Contract Documents.

6.6 Contractor has correlated the information known to Contractor, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

6.7 Contractor has given Design Professional written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Design Professional is acceptable to Contractor, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

6.8 Contractor has the full power and authority to make, execute, deliver and perform the Work hereunder and has authorized the undersigned to bind it to this Contract and the Contract Documents.

6.9 The representations of Contractor shall be continuing and shall survive the execution and termination of this Contract.

ARTICLE 7 **SAFETY TRAINING AND NOTICE OF PENALTIES**

7.1 Contractor shall provide a 10 hour Occupational Safety and Health Administration (OSHA) construction safety program for all employees who will be on-site during this project. The construction safety program shall include a course in construction safety and health approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations which is at least as stringent as an approved OSHA program as required by R.S.Mo. 292.675.

7.2 Contractor shall require all on-site employees who have not previously completed the OSHA safety program as required by R.S.Mo. 292.675 to complete the program within 60 days after the commencement of work on the project.

7.3 Contractor acknowledges and agrees that any of contractor's employees found on the project site without documentation of the successful completion of an OSHA construction safety program as required by R.S.Mo. 292.675 shall be required to produce such documentation within 20 days or will be subject to removal from the project.

7.4 Contractor shall require all of its subcontractors to comply with the requirements of this section and R.S.Mo. 292.675.

7.5 Pursuant to R.S.Mo. 292.675, Contractor shall forfeit to the City as a penalty Two Thousand Five Hundred Dollars (\$2,500) dollars, plus \$100 for each on-site employee employed by contractor or subcontractor, for each calendar day, or portion thereof, such on-site employee is employed without the construction safety training required under section 7.1 of this Article.

7.6 The penalties described in section 7.5 of this Article shall not begin to accrue until the time periods allowed for in sections 7.2 and 7.3 above have elapsed.

7.7 Violations of R.S.Mo. 292.675 and the imposition of the penalties described in this Section shall be investigated and determined by the Missouri Department of Labor and Industrial relations.

ARTICLE 8 **CONTRACT DOCUMENTS**

The Contract Documents, except for written modifications executed after the date of this Contract, which comprise the entire agreement between the City and Contractor concerning the Work, consist of the following:

8.1 This Contract for Construction.

- 8.2 Exhibits to this Contract, if any.
- 8.3 Notice to Proceed.
- 8.4 General Conditions of the Contract for Construction.
- 8.5 Supplementary Conditions, if any, contained in the Project Manual.
- 8.6 [Reserved].
- 8.7 Performance and Maintenance Bond.
- 8.8 Payment Bond.
- 8.9 Specifications contained in the Project Manual as follows:

<u>Division</u>	<u>Title</u>	<u>Pages</u>

- 8.10 The Drawings, as follows:

None

- 8.11 Addenda, if any, as follows:

<u>Number</u>	<u>Date</u>	<u>Pages</u>

- 8.12 Other documents, if any, as follows:

None

There are no Contract Documents other than those listed above in this Article 8 or the General Conditions of the Contract for Construction.

ARTICLE 9
MISCELLANEOUS

9.1 Terms used in this Contract which are defined in Article 1 of the General Conditions of the Contract for Construction will have the meanings indicated in the General Conditions of the Contract for Construction.

9.2 The City and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.3 The business address of Contractor given herein is the place to which all notices, letters, and other communication to Contractor will be mailed or delivered. The address of the City appearing herein is hereby designated as the place to which all notices, letters, and other communication to the City shall be mailed or delivered. Either party may change his address at any time by an instrument in writing delivered to Design Professional and to the other party.

IN WITNESS WHEREOF, the City and Contractor have signed this Contract by and through their duly authorized representatives. All portions of the Contract Documents have been signed or identified by the City and Contractor or by Design Professional on their behalf.

ATTEST:

CITY OF ST. JOSEPH, MISSOURI
"City"

City Clerk

City Manager

APPROVED AS TO FORM AND EFFECTIVE
UPON CERTIFICATION OF DIRECTOR OF
FINANCIAL SERVICES

I do hereby certify that the above contract or order is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefore.

City Attorney

Director of Administrative Services

CONTRACTOR
"Contractor"

By: _____

Title: _____

EXHIBIT A
REPORTS, TESTS AND DRAWINGS
WHICH ARE NOT CONTRACT DOCUMENTS

**GENERAL CONDITIONS OF THE
CONTRACT FOR CONSTRUCTION**

(Lump Sum)

**CITY OF ST. JOSEPH
1100 Frederick Avenue
St. Joseph, Missouri 64501-2346**

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**GENERAL CONDITIONS OF
THE CONTRACT FOR CONSTRUCTION
(Lump Sum)**

ARTICLE 1 - GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of (1) the City's Contract for Construction as executed by the City and the Contractor and all documents identified therein; (2) the Performance and Maintenance Bond; (3) the Payment Bond; (4) these General Conditions of the Contract for Construction; (5) any Supplementary Clauses and Conditions identified in the Contract for Construction and/or identified in the Project Manual; (6) the Drawings identified in the Contract for Construction; (7) the Specifications identified in the Contract for Construction; (8) any Addenda identified in the Contract for Construction; and (9) any other documents specifically incorporated into the Contract by reference in the Contract Documents. Contract Modifications consisting of Change Order(s), Construction Change Directive(s) or a written order(s) for minor change in the Work issued by the Design Professional shall become Contract Documents upon their execution or issuance.

1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written Modification identified above. The Contract Documents shall not be construed to create a contractual relationship of any kind between the City and a Subcontractor.

1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the City or by separate contractors.

1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

1.1.7 THE PROJECT MANUAL

The Project Manual is a volume assembled for the Work that, for the purposes of this Contract and the Contract Documents, only contains the Specifications and Addenda issued prior to execution of this Contract and other Contract Documents specifically identified in the Contract for Construction.

1.1.8 APPROVED

When the words “approved,” “satisfactory,” “proper” or “as directed” are used, approval by the City, through its Design Professional shall be understood.

1.1.9 PROVIDE

When the word “provide” including derivatives thereof is used, it shall mean to properly fabricate, complete, transport, deliver, install, erect, construct, test and furnish all labor, materials, equipment, apparatus, appurtenances, and all items and expenses necessary to properly complete in place, ready for operation or use under the terms of the Specifications.

1.1.10 ADDENDA

Addenda are written or graphic instruments issued prior to the execution of the Contract which modify or interpret the bidding documents, including the Drawings and Specifications, by additions, deletions, clarifications or corrections.

1.1.11 KNOWLEDGE

The terms “knowledge,” “recognize” and “discover,” their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows or should know, recognizes or should recognize and discovers or should discover in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression “reasonably inferable” and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill and diligence required of the Contractor by the Contract Documents.

1.1.12 DAY(S)

“Day(s)” means a calendar day(s) unless otherwise specifically indicated.

1.1.13 PUNCH LIST

“Punch List” means the list of items, prepared in connection with the inspection of the Project by the City, through its Design Professional in connection with substantial completion of the Work or a portion of the Work, which the City, through its Design Professional has designated as remaining to be performed, completed or corrected before the Work will be accepted by the City.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Contract Documents shall be signed by the City and the Contractor as provided in the Contract. If either the City or the Contractor or both do not sign all the Contract Documents, the City, through its Design Professional shall identify such unsigned Documents upon request.

1.2.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. The Contractor represents that it has performed its own investigation and examination of the site and its surroundings and satisfied itself before entering into this Contract as to:

- (a) conditions bearing upon transportation, disposal, handling and storage of materials;
- (b) the availability of labor, materials, equipment, water, electrical power, utilities and roads;
- (c) uncertainties of weather, river stages, flooding and similar characteristics of the site;
- (d) conditions bearing upon security and protection of material, equipment and Work in progress;

- (e) the form and nature of the Project site, including the surface and sub-surface conditions;
- (f) the extent and nature of Work and materials necessary for the execution of the Work and the remedying of any defects therein; and
- (g) the means of access to the site and the accommodations it may require and, in general, shall be deemed to have obtained all information as to risks, contingencies and other circumstances.

The City assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The City shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Paragraph 1.2.2.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results. In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall (1) provide the better quality or greater quantity of Work or (2) comply with the more stringent requirement; either or both in accordance with the Design Professional's interpretation. On the Drawings, given dimensions shall take precedence over scaled measurements, and large scale drawings over small scale drawings. Before ordering any materials or doing any Work, the Contractor and each Subcontractor shall verify measurements at the Project site and shall be responsible for the correctness of such measurements. No extra charge or compensation will be allowed on account of differences between actual dimensions and the dimensions indicated on the Drawings, unless the Design Professional determines that a deviation from the dimensions indicated on the Drawings merit an extra charge or compensation. Any difference which may be found shall be submitted to the Design Professional for resolution before proceeding with the Work. If a minor change in the Work is found to be necessary due to actual field conditions, the Contractor shall submit detailed drawings of such departure for the approval by the Design Professional before making the change.

1.2.4 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Instructions and other information furnished in the Specifications, including, without limitation, items in connection with prefabricated or prefinished items, are not intended to supersede work agreements between employers and employees. Should the Specifications conflict with such work agreements, the work agreements shall be followed, provided such items are provided and furnished as specified. If necessary, such Work shall be performed on the Project site, instead of at the shop, by appropriate labor and in accordance with the requirements of the Drawings and Specifications.

1.2.5 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Whenever a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other Association Standard, the Contractor shall present an affidavit from the manufacturer when requested by the Design Professional or required in the Specifications, certifying that the product complies with the particular Standard or Specification. When requested by the Design Professional or specified, support test data shall be submitted to substantiate compliance. Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitutions may be made unless accepted prior to execution of the Contract or if accepted as a change in the Work. When two or more products are shown or specified, the Contractor has the option to use either of those shown or specified.

1.2.6 The referenced portions of all documents and publications (such as manuals, handbooks, codes, standards and specifications) issued by any technical society, trade or professional organization or association, or regulatory or governmental authority which are cited in the Contract Documents for the purpose of establishing requirements applicable to equipment, materials or workmanship under this Contract, shall be deemed to be incorporated herein as fully as if printed and bound with the Specifications of this Contract, in accordance with the following:

(a) Wherever reference is made to any such document, the Contractor shall comply with the requirements set out in the edition specified in this Contract, or if not specified, the latest edition or revision thereof, as well as the latest amendment or supplement thereto, in effect on the date of the bidding for this Project, except as modified by, as otherwise provided in, or as limited to type, class or grade, by the Specifications of this Contract.

(b) No provision of any such referenced document or standard shall be effective to change the responsibilities of the City, or its consultants, agents and employees from those set forth in the Contract Documents, nor to assign to any of them any responsibility, duty or authority for safety precautions or procedures or to supervise or direct the performance of the Work.

1.2.7 Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and the provisions of any standard, specification, manual, handbook, or code issued by any technical society, trade or professional organization or association or any regulatory governmental authority (whether or not specifically incorporated by reference in the Contract Documents).

1.3 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

1.3.1 The Drawings, Specifications and other documents prepared by the Design Professional are property of the City through which the Work to be executed by the Contractor is described. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the City. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the City, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the City, and copies thereof furnished to the Contractor, are for use solely with respect to this Project and are property of the City. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the City. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the City appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the City. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the City's property or copyright or other reserved rights.

1.4 CAPITALIZATION

1.4.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, or (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in this document.

1.5 INTERPRETATION

1.5.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an", but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

ARTICLE 2 - THE WORK OF THE CONTRACT

2.1 The Contractor shall execute the entire Work described in the Contract Documents or reasonably inferable by the Contractor as necessary to produce the results intended by the Contract Documents.

ARTICLE 3 - CITY

3.1 DEFINITION

The term "City" refers to the City of St. Joseph, Missouri.

3.2 INFORMATION AND SERVICES REQUIRED OF THE CITY

3.2.1 The Contractor acknowledges that the City, prior to execution of this Contract, has furnished the Contractor with surveys describing physical characteristics and legal limitations for the site of the Project, and a legal description of the site. The Contractor acknowledges the sufficiency of the information provided.

3.2.2 Information or services under the City's control shall be furnished by the City upon written request of the Contractor with reasonable promptness to avoid delay in orderly progress of the Work.

3.2.3 The Contractor will be furnished, free of charge, three bound copies and one electronic copy (in PDF or similar format) of the Drawings and Project Manuals.

3.2.4 The foregoing are in addition to other duties and responsibilities of the City enumerated herein.

3.2.5 Except as otherwise provided in these General Conditions, the City shall issue Communications to the Contractor through the Design Professional.

3.2.6 The City shall obtain all lands and rights-of-way necessary for carrying out the Work prior to the issuance of a notice to proceed, except as set forth in the Contract Documents. In the event the City is unable to acquire all lands and rights-of-way prior to the issuance of the notice to proceed, the City shall notify the Contractor of which lands and rights-of-way have not been obtained and will proceed with Work only upon lands and rights-of-way the City has obtained. The Contractor recognizes this risk and this contingency has been included in the Contract Sum. The City, with reasonable promptness, shall obtain the lands and rights-of-way for the entire Project. In no event will the Contractor be entitled to monetary compensation for the City's reasonable delay in obtaining the lands or rights-of-way, since this contingency has been included in the Contract Sum. The Contractor's sole recovery will be in the form of an extension of time, if appropriate.

3.3 CITY'S RIGHT TO STOP THE WORK

3.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 14.2 or fails to carry out Work in accordance with the Contract Documents, the City, by written order, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the City to stop the Work shall not give rise to a duty on the part of the City to exercise this right for the benefit of the Contractor or any other person or entity.

3.4 CITY'S RIGHT TO CARRY OUT THE WORK

3.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7) day period after receipt of written notice from the City to commence and continue correction of such default or neglect with diligence and promptness, the City may, without prejudice to other remedies the City may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Design Professional's additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the City.

3.5 EXTENT OF CITY RIGHTS

3.5.1 The rights stated in this Article 3 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the City (1) granted in the Contract Documents, (2) at law or (3) in equity.

3.5.2 In no event shall the City have control over, charge of, or any responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the City in the Contract Documents.

ARTICLE 4 - CONTRACTOR

4.1 DEFINITION

4.1.1 The Contractor is the person or entity with whom the City has entered into the Contract for Construction. The term "the Contractor" means the Contractor or the Contractor's authorized representative.

4.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

4.2.1 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the City and shall at once report to the Design Professional any errors, inconsistencies or omissions discovered. If the Contractor performs any construction activity which it knows or should have known involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Design Professional the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

4.2.2 Before commencing the Work the Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents. Errors, inconsistencies or omissions discovered shall be reported to the Design Professional within twenty-four (24) hours. Any errors, inconsistencies or omissions discovered, but not reported as required above, shall be promptly rectified by the Contractor without any additional cost to the City. The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the City, or the work installed by other contractors, is not guaranteed by the City. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions and locations. In all cases of interconnection of its Work with existing or other work, the Contractor shall verify at the site all dimensions relating to such existing or other work.

4.2.3 The Contractor shall perform the Work in strict accordance with the Contract Documents and submittals approved pursuant to Paragraph 4.12.

4.2.4 Except as to any reported errors, inconsistencies or omissions, by executing the Contract, the Contractor represents the following:

(a) The Contract Documents were sufficiently complete and detailed on the date of bid opening for the Contractor to (1) perform the Work required to produce the results intended by the Contract Documents and (2) comply with all the requirements of the Contract Documents; and

(b) The Work required by the Contract Documents, including, without limitation, all construction details, construction means, methods, procedures and techniques necessary to perform the Work, use of materials, selection of equipment and requirements of product manufacturers are consistent with: (1) good and sound practices within the construction industry; (2) generally prevailing and accepted industry standards applicable to the Work; (3) requirements of any warranties applicable to the Work; and (4) all laws, ordinances, regulations, rules and orders which bear upon the Contractor's performance of the Work.

4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

4.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

4.3.2 The Contractor shall provide competent civil engineering and survey services to execute the Work in accordance with the Contract Documents. In addition, if specific engineering services are included and required in the Contract Documents, those requirements shall not relieve the Contractor from providing other engineering services that are reasonably necessary but unspecified. The Contractor shall verify the figures shown on the Drawings before undertaking any construction work and shall be responsible for the accuracy of the finished Work. The Contractor shall cooperate with the Design Professional in establishing horizontal and vertical control points. If the Contractor finds that any previously established points have been destroyed or displaced, the Contractor shall promptly notify the Design Professional. The Contractor shall protect the established horizontal and vertical control points and shall make no changes in location without the written

approval of the Design Professional. Control points destroyed or that require relocation because of necessary construction activities shall be immediately reported to the Design Professional. The Contractor shall be fully responsible for all layout work for the proper location of Work as required by the Contract Documents. The Contractor shall maintain alignment and grades, including the setting of all stakes, ranges, grid lines and other appurtenance facilities. The Contractor shall carefully protect and maintain such stakes and keep the same uncovered for examination during the progress of the Work. Before starting construction on the site, the Contractor shall obtain from the responsible local officials and furnish to the Design Professional written assurances certifying that the monuments or markers which delineate the site boundaries are placed in the correct position and that the proposed new construction and site development work, as staked-out by the Contractor, are wholly within the limits of the City's ownership, leasehold or right-of-way, as required by the Contract Documents. The Contractor's records shall adequately reference, by precise measurement to two or more nearby permanent structures or points, each boundary marker which has been placed or accepted by the local officials. The Contractor shall be responsible for the accurate replacement of any boundary markers which are disturbed, obliterated or destroyed during the performance of the Work.

4.3.3 The Contractor shall provide competent and qualified personnel to construct the Work as required by the Contract Documents. Except as otherwise required for the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the Project site shall be performed during regular working hours and the Contractor shall not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without the City's prior written consent given after prior written notice to the Design Professional. No work shall be done between 6:00 p.m. and 7:00 a.m. without prior written consent of the City. However, emergency work may be done without prior written notice to the City. Night work may be undertaken as a regular procedure with the prior written consent of the City; such consent, however, may be revoked at any time by the City if the Contractor fails to maintain adequate equipment and supervision for proper prosecution and control of the Work at night.

4.3.4 The Contractor shall be responsible to the City for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and any entity or other persons performing portions of the Work.

4.3.5 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Design Professional in the Design Professional's, administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

4.3.6 The City shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

4.3.7 The Contractor shall, and in accordance with any regulations presented by the Design Professional or the City, use only designated site entrances and roadways or use temporary entrances and roadways constructed by the Contractor.

4.3.8 If the premises for the Project are occupied, the Contractor, its Subcontractors, suppliers and employees shall comply with instructions or regulations of the City governing access to, operation of, and conduct while in or on the premises and shall perform all Work required under the Contract Documents in such a manner as not to unreasonably interrupt or interfere with the conduct of City business. Any request received by the Contractor from occupants of existing buildings shall be referred to the City for determination.

4.4 LABOR AND MATERIALS

4.4.1 The Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, sanitary facilities, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Contractor is responsible for determining with local officials and authorities what is required in connection with outside services and utilities. The Contractor shall arrange for and pay all fees and charges for installation of meters and other devices and connection to existing outside services and utilities necessary for the Project. The Contractor shall arrange to receive and make payment of bills by utilities for the Contractor's use and consumption of their products and services until the date of Substantial Completion of the Project. The Contractor shall provide and maintain an office for use of the Contractor and any employee, agent or representative of the City assigned to the Project. This office shall be removed by the Contractor when directed by the Design Professional. The Contractor shall provide heat, air conditioning, ventilation and other environmental controls and take all actions necessary to protect all Work,

materials and equipment against injury or damage from weather, wetness, temperature and humidity conditions, dust and similar environmental factors.

4.4.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

4.4.3 The Contractor shall only employ labor on the Project or in connection with the Work capable of working harmoniously with all trades, crafts and any other individuals associated with the Project. The Contractor shall take all measures to minimize the likelihood of any strike, work stoppage or other labor disturbance. If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage or cost to the City and without recourse to the City, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils which regulate or distinguish what activities shall not be included in the work of any particular trade. In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Document because of such conflict involving any such labor agreement or regulation, the City may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive. Notwithstanding any other provision contained herein and superseding any contrary term expressed herein or in any of the Contract Documents, the Contractor agrees that in the event of any strike, picket, sympathy strike, work stoppage, or other form of labor dispute (collectively referred to as "Disruption") at the construction site, whether that Disruption is in connection with the Contractor, Subcontractor, the City or any other contractor, subcontractor or supplier on this construction site, the Contractor will continue to perform the Work required herein without interruption or delay. In the event the Contractor fails to continue the performance of the Work included herein, without interruption or delay, because of such Disruption or other form of labor dispute, the City may terminate the services of the Contractor after giving forty-eight (48) hours written notice of an intent to do so, or the City may invoke any of the rights set forth in the Contract Documents. The Contractor expressly waives the right to any extension of time for any delay that may occur as the result of any Disruption, strike, picket, sympathy strike, work stoppage or other form of labor dispute at the construction site. The Contractor hereby expressly understands that work on this Project may be performed by both union and non-union employees and that it is probable that both union and non-union employees will simultaneously be working on this Project. Whenever the Contractor has knowledge that any actual or potential Disruption or labor dispute is delaying or threatens to delay the timely performance of the Project, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the City. Access will be limited to the construction site. During the performance of Work required by this Contract, the Contractor, its employees, subcontractors, suppliers, and visitors will use only such entrance or entrances to the construction site as may be designated from time-to-time by the City. It is of utmost importance that the Contractor require all of its employees, subcontractors, suppliers and visitors to only use the entrance or entrances which have been designated for their use. In the event that the Contractor or any of its employees, subcontractors, suppliers or visitors should fail to use the designated entrance(s) and thereby cause the City to incur additional costs (guards, attorney fees, etc.) then the Contractor agrees to be fully responsible for these additional costs.

4.4.4 If, after execution of the Contract and prior to submittal of applicable shop drawings, the Contractor desires to submit an alternate product or method in lieu of what has been specified or shown in the Contract Documents, the Contractor may do so in writing and setting forth the following:

- (a) Full explanation of the proposed substitution and submittal of all supporting data including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution.
- (b) Reasons the substitution is advantageous and necessary, including the benefits to the City and the Work in the event the substitution is acceptable.
- (c) The adjustment, if any, in the Contract Sum, in the event the substitution is acceptable.
- (d) The adjustment, if any, in the time of completion of the Contract and the construction schedule in the event the substitution is acceptable.
- (e) An affidavit stating that: (1) the proposed substitution conforms and meets all the requirements shown on the Drawings, and (2) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified

by the Design Professional. Proposals for substitutions shall be submitted in triplicate to the Design Professional in sufficient time to allow the Design Professional no less than ten (10) working days for review. No substitution will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

4.4.5 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions:

- (a) Required for compliance with interpretation of code requirements or insurance regulations then existing.
- (b) Unavailability of specified products, through no fault of the Contractor.
- (c) Subsequent information discloses inability of specified products to perform properly or to fit in designated space.
- (d) Manufacturer/fabricator refuses to certify or guarantee performance of specified product as required.
- (e) When, in the judgment of the City, or the Design Professional that a substitution would be substantially in the City's best interests in terms of cost, time, or other considerations.

4.4.6 Whether or not any proposed substitution is accepted by the City or the Design Professional, the Contractor shall reimburse the City for any fees charged by a third party Design Professional, engaged by the City for evaluating each proposed substitute.

4.4.7 The City may, at reasonable times, inspect the part of the plant or work site of the Contractor or Subcontractor of any tier which is pertinent to the performance of this Contract.

4.5 WARRANTY

4.5.1 In addition to any other warranties required by or provided under the Contract Documents, the Contractor warrants to the City that materials and equipment furnished under the Contract will be of good quality and new, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will strictly conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective.

4.5.2 The Contractor agrees to assign to the City at the time of final completion of the Work, any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

4.5.3 The Contractor's obligation to perform and complete the Work in strict accordance with the Contract Documents shall be absolute. None of the following shall constitute an acceptance of Work that is not in strict accordance with the Contract Documents or a release of the Contractor's obligation to perform the Work in strict accordance with the Contract Documents:

- (a) observations or inspections by the Design Professional;
- (b) certification or recommendation of any progress or final payment by the Design Professional;
- (c) the issuance of a certificate of Substantial or Final Completion or any payment by the City to the Contractor under the Contract Documents;
- (d) use or occupancy of the Work or any part thereof by the City;
- (e) any acceptance by the City or any failure to do so;

- (f) any review or approval of Shop Drawings or other submittal by the Design Professional;
- (g) any inspection, test or approval by others; or
- (h) any correction of defective Work by the City.

4.6 TAXES

4.6.1 Except as otherwise provided herein, the Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. Pursuant to RSMo. § 144.062, certain purchases by the Contractor of materials incorporated in or consumed in the construction of the Project are exempt from certain sales taxes if the suppliers of said materials are presented with a valid Project Exemption Certificate as described therein. The City will supply the Contractor with the Project Exemption Certificate(s) provided for in RSMo. § 144.062 in a form determined in the sole discretion of the City to be appropriate for use on the Project by the Contractor and the Contractor's subcontractors which Certificate will enable the Contractors to exempt said purchases from said taxes. The Contractor agrees that any use of said certificate by the Contractor or any subcontractor shall be in accordance with RSMo. § 144.062 and the terms of said certificates and the Contractor shall indemnify the City for any loss or expense, including, but not limited to, reasonable attorney's fees, incurred by the City arising from issuance of said Certificate regardless of whether such loss or expense is caused in part by the negligence of the City in its preparation of the Certificate. Pursuant to RSMo. § 144.030, Paragraph 15, Missouri State Sales Tax Law, "Machinery, equipment, appliances and devices purchased or leased and used solely for the purpose of preventing, abating or monitoring water pollution, and materials and supplies solely required for the installation, construction or reconstruction of such machinery, equipment, appliances and devices, and so certified as such by the Director of the Department of Natural Resources" are exempt from state and local sales and use taxes. The Contractor represents that it has taken the provisions of RSMo. §§ 144.062 and 144.030 into consideration in the preparation of its Bid and the Contractor shall be responsible for obtaining the tax exemption for any materials or equipment purchased under this Contract. No modification will be made in the Contract Price because of failure of the Contractor to obtain the sales/use tax exemption.

4.7 PERMITS, FEES, LAWS AND NOTICES

4.7.1 The Contractor shall secure, pay for, and, as soon as practicable, furnish the City with copies or certificates of all permits and fees, licenses and inspections necessary for the proper execution and completion of the Work, including, without limitation, all building permits, whether or not required at the time of the award of the Contract. Neither the City nor the Contractor shall be entitled to an equitable adjustment on account of the cost of permits, licenses and fees which are imposed or increased or eliminated or decreased, after the award of the Contract. The Contractor shall give written assurances to the Design Professional that all subcontractors and others performing Work on or for the Project have obtained all requisite licenses and permits. All connection charges, assessments or inspection fees as may be imposed by any municipal agency or utility company are included in the Contract Sum and shall be the Contractor's responsibility.

4.7.2 The Contractor shall, without additional expense to the City, be responsible for complying with all federal, state or local laws, statutes, codes, ordinances, regulations or orders, and orders or regulations of any governmental authority having jurisdiction over the Project (collectively referred to as "Laws") applicable to the performance of the Work. The Contractor shall give notices required by any applicable Laws bearing on performance of the Work. Neither the City nor the Design Professional shall be responsible for monitoring Contractor's compliance with any applicable Laws.

4.7.3 It is not the Contractor's primary responsibility to ascertain that the Contract Documents are in accordance with applicable Laws, unless such Laws bear upon performance of the Work. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall, within twenty-four (24) hours, notify the Design Professional and the City in writing, and necessary changes shall be accomplished by appropriate Modification. If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Design Professional and the City, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

4.7.4 This Contract shall be based upon payment by the Contractor and his Subcontractors of wage rates not less than the prevailing hourly wage rate for each craft or classification of workman engaged on the Work as determined by the Labor and Industrial Relations Commission of Missouri on behalf of the Department of

Labor and Industrial Relations. The Contractor shall comply with all requirements of the prevailing wage law of Missouri, RSMo. §§ 290.210 to 290.340, including the latest amendments thereto. The Contractor and each Subcontractor shall keep an accurate record showing the names, occupations, and crafts of all workmen employed, together with the number of hours worked by each workman and the actual wages paid to each workman. At all reasonable hours, such records shall be open to inspection by the representatives of the Labor and Industrial Relations Commission of Missouri and the City. The payroll records shall not be destroyed or removed from the state for at least two (2) years after completion of the Work. Throughout the life of this Contract, a copy of the wage determination and the rules promulgated by the Labor and 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 (1) inch high. Pursuant to RSMo. § 290.250, the Contractor shall forfeit to the City as a penalty, One Hundred Dollars (\$100.00) for each workman employed, for each calendar day, or portion thereof, such workman is paid less than the stipulated rates for any work done under the Contract, by him or by any Subcontractor under him. After completion 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 of compliance stating that he has fully complied with the provisions and requirements of the prevailing wage law of Missouri. During the life of this Contract, the prevailing hourly rate of wages is subject to change by the Department of Labor and Industrial Relations 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 any such change.

4.7.5 If a federal governmental agency is providing funding for the Project and if required by Division 1 of the Specifications or the Contract Documents, the Contractor agrees to pay prevailing hourly rate of wages for regular, holiday and overtime work as determined by the Secretary of Labor in accordance with the Davis-Bacon Act as amended and supplemented. The Contractor further agrees to comply with all applicable federal laws, statutes and regulations relating to and establishing prevailing wage rates. Where Missouri and Federal prevailing wage rates are applicable, the higher of the two will be paid by the Contractor.

4.7.6 Violations of the Missouri prevailing wage statute, whether by the Contractor or its Subcontractors, result in additional costs for the City, including, but not limited to, costs of construction delays, of additional work for City staff, of added interest expense, of legal and litigation expense, and of delays in the levying of special assessments. The Contractor shall ensure that prevailing wage rates are paid and that work is done by the correct category of worker both on the prime contract and on all subcontracts. The cost to the City of any particular violation is difficult to establish; in the event of the failure by the Contractor or any of its Subcontractors to pay wages as provided in the Missouri prevailing wage Laws, the City may deduct from the price specified in the Contract and may retain as liquidated damages, and not as a penalty, Thirty-Five Dollars (\$35.00) per day per individual who is paid less than the prevailing wage, to approximate the investigative costs resulting to the City from such violations. To approximate the cost of delay, including interest expense from delay in levying special assessments and issuing special assessment tax bills, additional liquidated damages, and not as a penalty, shall be paid in the amount of One Hundred Dollars (\$100.00) per day for any delay in closing out the Contract occasioned by failure to pay the prevailing wage. Such additional sum shall be collected, whether or not the work days on the Contract could be closed out. Action under this section shall be commenced by the City giving a written notice to the Contractor. The notice shall set out the persons who are claimed to have been underpaid, and the days they are claimed to have been underpaid. The Contractor shall have ten (10) days, or such longer time as the City shall allow, to respond to the allegation. Based on the information in the notice, the response by the Contractor and such additional information as the City shall determine, the City shall render its decision, in writing, giving the amount of liquidated damages owed, including any damages for occasioning a delay in closing out the Contract. The Contractor shall not be required to pay liquidated damages for any false or malicious claims. This liquidated damage will be in addition to the liquidated damages specified in the Contract.

4.7.7 Pursuant to the Missouri Domestic Product Procurement (Buy American) Act, RSMo. §§ 34.350 to 34.359, any manufactured goods or commodities used or supplied either in the performance of this Contract or of any subcontract thereto shall be manufactured, assembled or produced in the United States unless one of the exceptions contained in that Act applies. The Contractor shall comply with such requirements and shall provide proof of compliance with this provision both at the time of bid and before any payment is made on the Contract. Pursuant to RSMo. § 71.140, preference shall be given to materials, products, supplies, provisions and all other articles produced, manufactured, compounded, made, or grown in the State of Missouri. The Contractor shall comply with such requirements and shall provide proof of compliance with this provision at the time of bid and before any payment is made on the Contract. Pursuant to the City's Purchasing Ordinance, preference shall be given to St. Joseph, Missouri suppliers in all procurement activities. Priority for contracting shall be given as follows if the quality and price are comparable with other goods:

- (a) American-made products manufactured or supplied by a St. Joseph business;
- (b) American-made products manufactured or supplied by a Missouri-based business;
- (c) American-made products;
- (d) Other products or services supplied by a St. Joseph business;
- (e) Other products or services supplied by a Missouri-based business; and
- (f) Other products or services.

4.8 ALLOWANCES

4.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the City may direct. Unless otherwise provided in the Contract Documents, allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. The Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances. Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual costs and the allowances.

4.9 SUPERINTENDENT

4.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

4.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

4.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the City's and Design Professional's information the Contractor's construction schedule for the Work and shall set forth interim dates for completion of various components of the Work and Project Milestone Dates as defined herein. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project, and shall provide for expeditious and practicable execution of the Work.

4.10.2 The Contractor, promptly after being awarded the Contract, shall prepare and keep current for the Design Professional's approval, a schedule showing when Shop Drawings, Product Data, Samples and all other submittals will be submitted for approval. Such schedule shall be coordinated with the Contractor's construction schedule and allow the Design Professional reasonable time to review submittals.

4.10.3 The construction schedule shall be in a format satisfactory to the City and the Design Professional which shall also: (1) provide a graphic representation of activities and events that will occur during performance of the Work; and (2) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"). Upon review and acceptance by the City and the Design Professional of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the City and the Design Professional and be re-submitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the City of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date or the Contract Sum unless any such adjustment is agreed to by the City and authorized pursuant to a Change Order.

4.10.4 The Contractor shall conform to the most recent approved schedule.

4.10.5 In the event the Design Professional determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, the City shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, and facilities and (3) other similar measures (hereinafter referred to collectively as Extraordinary Measures). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The City's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule. The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the City under or pursuant to this Paragraph 4.10.4. The City may exercise the rights furnished the City under or pursuant to this Paragraph 4.10.4 as frequently as the City deems necessary to ensure that the Contractor's performance of the Work will comply with the completion date set forth in the Contract Documents.

4.11 DOCUMENTS AND SAMPLES AT THE SITE

4.11.1 The Contractor shall maintain at the site for the City one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, executed by all parties, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Design Professional and shall be delivered to the Design Professional for submittal to the City upon completion of the work.

4.11.2 The Contractor shall maintain at the Project site, and shall make available to the City, through its Design Professional one record copy of the Drawings (the "Record Drawings") in good order. The Record Drawings shall be prepared and updated during the prosecution of the Work. The prints for Record Drawing use will be a set of blackline prints provided by the City to the Contractor at the start of construction. The Contractor shall maintain said set in good condition and shall use colored pencils to mark up said set with "record information" in a legible manner to show: (1) deviations from the Drawings made during construction; (2) details in the Work not previously shown; (3) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (4) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stub-outs; and (5) such other information as the City may reasonably request. At the completion of the Work, the Contractor shall deliver all Record Drawings to the City. Final payment and any retainage shall not be due and owing to the Contractor until the final Record Drawings marked by the Contractor as required above are delivered to the City.

4.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

4.12.1 Shop Drawings are drawings, diagrams, schedules and other data specifically prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

4.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

4.12.3 Samples are physical samples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

4.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents.

4.12.5 The Contractor shall review, approve and submit to the Design Professional Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the City or of separate contractors. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action.

4.12.6 The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Design Professional. Such Work shall be in accordance with approved submittals.

4.12.7 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

4.12.8 The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Design Professional's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Design Professional in writing of such deviation at the time of submittal and the Design Professional has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Design Professional's approval thereof.

4.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Design Professional on previous submittals.

4.12.10 Informational submittals upon which the Design Professional is not expected to take responsive action may be so identified in the Contract Documents.

4.12.11 When professional certification of performance criteria of materials, systems, or equipment is required by the Contract Documents, the Contractor shall provide the person or party providing the certification with full information on the relevant performance requirements and on the materials, systems, or equipment that are expected to operate at the Project site. The certification shall be based on performance under the operating conditions generally prevailing or expected at the Project site.

4.12.12 All Shop Drawings for any architectural or engineering work must be submitted to, and approved by, the Design Professional. The Contractor represents and warrants that all Shop Drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the Shop Drawing is prepared and, if required by the Design Professional or applicable Laws, by a licensed engineer or design professional.

4.13 USE OF SITE

4.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

4.13.2 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.

4.13.3 The Contractor and any entity for which the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the City, which may be withheld in the sole discretion of the City.

4.13.4 The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Documents, the Contractor shall not interfere with the occupancy or beneficial use of (1) any areas and buildings adjacent to the site of the Work or (2) the Building in the event of partial occupancy. The Contractor shall assume full responsibility for any damage to the land or area comprising the Project or to the owner or occupant thereof or of any adjacent land or areas resulting from the performance of the Work.

4.14 CUTTING AND PATCHING

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

4.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the City or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the City or a separate contractor except with written consent of the City and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the City or a separate contractor the Contractor's consent to cutting or otherwise altering the Work. The Contractor shall not cut or patch existing Work or Work in progress without the written approval of the Design Professional.

4.15 REMOVAL AND CLEANING UP

4.15.1 The Contractor shall remove all structures which are not to remain in place, at its own expense. Materials from the existing structures which are suitable for use elsewhere shall remain the property of the City. It shall be removed without damage, in sections which may be readily transported, and shall be piled neatly at an accessible location on or near the Project site by the Contractor at its expense.

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

4.15.3 In all construction of roadways, highways, and bridges, the Contractor shall, upon completion of the work and before acceptance and final payment is made, cut all brush, grass and weeds and shall clean and remove from the Project site all surplus and discarded material, perishable matter, rubbish and temporary structures; the Contractor shall also be responsible for performing said tasks with regard to the right-of-way and adjacent property to the extent the Contractor or its Subcontractors are responsible for placing the materials and matter referenced above thereon. The Contractor shall also remove and dispose of as directed, all structures, abandoned fences and guard rails, not otherwise provided for in the specifications. All merchantable timber and guard rail materials, on hand at the time of the right-of-way acquisition by the City, shall remain the property of the City. In contracts involving grading by volume, or any other contract contemplating the closing of any roads to through traffic, it is understood that the Contractor, at its own expense unless otherwise set forth in the Contract Documents, shall open and clean all existing channels and culverts, leaving them free from all excess mud or silt, drift, brush or debris of any kind, and that it shall clean up the entire right-of-way as described in the plans and as specified herein. If the Contract is based upon unit prices, the cost of all such work shall be considered as included in, and completely covered by, the unit prices bid for the various items included in the Contract.

4.16 ACCESS TO WORK

4.16.1 The Contractor shall provide the City and Design Professional access to the Work in preparation and progress wherever located.

4.17 ROYALTIES AND PATENTS

4.17.1 The Contractor shall pay all royalties and license fees and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. The Contractor shall defend suits or claims for infringement of patent rights or copyrights and shall hold the City, Design Professional, and Design Professional's consultants harmless from loss on account thereof.

4.18 INDEMNIFICATION

4.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the City, the City's consultants, Design Professional, Design Professional's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, direct, indirect or consequential, including, but not limited to, attorneys' fees or other professional fees and expenses, arising out of or resulting from

performance of the Work, by the Contractor, a Subcontractor, anyone directly or indirectly employed by either of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by the negligence of a party indemnified hereunder or whether liability is imposed upon such indemnified party by any applicable Laws regardless of the negligence of any such party. The above-said right of indemnity shall be in addition to other rights of indemnity that the City may possess.

4.18.2 In claims against any person or entity indemnified under this Paragraph 4.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 4.18 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

4.18.3 All insurance required hereunder shall provide that the insurer's cost of providing the insured(s) a defense and appeal, including attorneys' fees, shall be supplementary and shall not be included as part of the policy limits, but shall remain the insurer's separate responsibility. Contractor shall cause its insurance carriers to waive all rights of subrogation against the design professional, the Owner and their officers, employees and agents.

4.19 NON-DISCRIMINATION AND AFFIRMATIVE ACTION

4.19.1 The Contractor agrees that in the performance of this Contract, neither the Contractor, nor its Subcontractors, will discriminate against any applicant for employment or employee because of race, color, religion, sex, national origin, age, handicapped or disability status, or veterans status.

4.19.2 The Contractor agrees that in the performance of this Contract, the Contractor and its Subcontractors will also take such affirmative action as is non-discriminatory and otherwise achievable through good faith effort to improve the utilization of qualified minorities and women.

4.19.3 The Contractor agrees that in the performance of this Contract, the Contractor and its Subcontractors will make every good faith effort to maximize the opportunity to participate in the Work of qualified minority and female businesses and individuals.

4.19.4 The Contractor and its Subcontractors agree to continue to perform the non-discrimination, affirmative action, and equal economic opportunity commitments made in the foregoing sections of this Article for the duration of the Work.

4.19.5 The Contractor will execute and submit and will cause each of its Subcontractors to execute and submit to the City reports as may be required by the City with respect to the foregoing non-discrimination, affirmative action and equal economic opportunity commitments.

4.19.6 The Contractor represents and warrants that it shall comply with all applicable federal, state and local laws, statutes, ordinances, regulations and executive orders relating to non-discrimination and affirmative action.

4.19.7 The Contractor represents and warrants that it shall comply with all non-discrimination, affirmative action and equal economic opportunity requirements of any state, regional or federal governmental agency or entity providing funding for the Project, including percentage goals.

4.19.8 The Contractor recognizes that a material factor in its selection by the City is the Contractor's stated willingness to undertake the requirements set forth in Paragraph 4.19. If the Contractor breaches any of its obligations set forth in Paragraph 4.19, the City may immediately terminate this Contract upon written notice. The rights and remedies of the City provided in this clause shall not be exclusive and are in addition to other rights and remedies provided by law or under this Contract.

4.20 EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

4.20.1 The Employment of unauthorized aliens, on the Project or in connection with the Work, is strictly prohibited. As a condition for the award of this Contract, the Contractor shall comply with RSMo. §285.530 in that they shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri.

4.20.2 Contractor shall affirm, by sworn affidavit and provision of documentation, its enrollment and participation in a federal work authorization program with respect to the employees working on the Project or in connection with the Work.

4.20.3 Contractor shall affirm, by sworn affidavit and provision of documentation, that it does not knowingly employ any person who is an unauthorized alien to work on the Project or in connection with the Work.

4.20.4 Contractor shall require each Subcontractor to affirmatively state in its contract with Contractor that the Subcontractor shall not knowingly employ, hire for employment or continue to employ an unauthorized alien to perform work in the state of Missouri. Contractor shall also require each Subcontractor to provide Contractor with a sworn affidavit, under the penalty of perjury, attesting to the fact that the Subcontractor's employees are lawfully present in the United States.

4.20.5 Contractor agrees to comply with any and all rules promulgated by the attorney general to implement the provisions of RSMo. §§ 285.525 to 285.550.

4.21 STANDARDS OF CONDUCT/CONFLICTS OF INTEREST

4.21.1 No officer, employee, agent, representative or official of the City or any member of such person's immediate family shall be permitted by the Contractor to share or receive any part of this Contract, or any benefit arising from it. The Contractor shall not offer or give a gratuity to any officer, employee, agent, representative or official of the City or any member of such person's immediate family to obtain a contract or favorable treatment under a contract.

4.21.2 The Contractor represents and warrants that no person, firm, agency or entity has been employed or retained to solicit or obtain this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except a bona fide employee or bona fide established commercial or selling agency maintained by the Contractor for the purposes of securing business.

4.21.3 The Contractor represents and warrants that it has not or will not provide, attempt to provide, solicit or accept, directly or indirectly, any money, fee, gift, anything of value or compensation of any kind for the purpose of improperly obtaining or receiving favorable treatment in connection with this Contract or in connection with any agreement with the Contractor's Subcontractors.

4.21.4 The Contractor represents and warrants that (1) its shareholders, officers, directors, agents and employees and (2) all of its Subcontractors have no financial or any other interest which would conflict in any manner or degree to the performance of this Contract.

4.21.5 Pursuant to the City's Purchasing Ordinance, it shall be unethical for any person to offer, give, or agree to give any employee or former employee of the City, or for any employee or former employee of the City to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for filing, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore. The Contractor represents and warrants that it has not engaged in the unethical conduct identified herein and shall not engage in any such conduct. The Contractor represents and warrants that it has no knowledge that any Subcontractor has engaged in any such conduct.

4.21.6 Pursuant to the City's Purchasing Ordinance, it shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontractor or order. The Contractor represents and warrants that it has not engaged in the unethical conduct identified herein and shall not engage in any such conduct. The Contractor represents and warrants that it has no knowledge that any Subcontractor has engaged in any such conduct.

4.21.7 The Contractor represents and warrants that it has not and will not employ or offer to employ any City employee who has or is participating directly or indirectly in the procurement or bidding process.

4.21.8 The Contractor agrees to immediately report in writing to the City Manager any violations of this Section 4.21 of which it has knowledge or otherwise becomes aware of.

4.21.9 The Contractor represents and warrants that it will comply with all standards of conduct and prohibitions against conflict of interest requirements of any state, regional or federal governmental agency or entity providing funding for the Project.

4.21.10 This Contract may be terminated by the City immediately upon written notice if the Contractor fails to comply with the provisions of this Paragraph 4.21, or in its sole and absolute discretion, issue a written warning or reprimand and deduct any fee, money, gift or other compensation at issue from the Contract Sum or debar or suspend the Contractor as provided in Section 9-1 of the City's Purchasing Ordinance. The rights and remedies of the City provided in this clause shall not be exclusive and are in addition to other rights and remedies provided by law or under this Contract.

4.22 DRUG FREE WORK PLACE

4.22.1 The Contractor agrees to take appropriate preventive steps before the assignment of any of its employees to perform under this Contract that it reasonably believes will ensure that its employees and its Subcontractor's employees at any level will not engage in inappropriate conduct while on City premises. Inappropriate conduct shall include, but is not limited to: being under the influence of or affected by alcohol, illegal drugs, or controlled substances; the manufacture, use, distribution, sale or possession of alcohol, illegal drugs or any other controlled substance, except for approved medical purposes; the possession of a weapon of any sort; or harassment, threats or violent behavior. The Contractor represents and warrants that it will comply with all drug-free work place requirements of any state, regional or federal agency or entity providing funding for the Project. Violation of this provision may result in immediate termination of this Contract upon notice from the City. The rights and remedies of this clause shall not be exclusive and are in addition to other rights and remedies provided by law or under this Contract.

ARTICLE 5 - ADMINISTRATION OF THE CONTRACT/CLAIMS

5.1 DESIGN PROFESSIONAL

5.1.1 The term Design Professional refers to the engineering or architectural firm or entity named in the Contract for Construction. In case of termination of employment of the Design Professional, the City shall appoint a design professional whose status under the Contract Documents shall be that of the former design professional.

5.2 ADMINISTRATION OF THE CONTRACT

5.2.1 The Design Professional will provide administration of the Contract as described in the Contract Documents, and will be the City's representative (1) during construction, (2) until final payment is due and (3) with the City's concurrence, from time to time during the correction period described in Paragraph 14.2. The Design Professional will have authority to act on behalf of the City only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract.

5.2.2 The City and the Contractor shall communicate through the Design Professional. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the City.

5.2.3 Based on the Design Professional's observations and evaluations of the Contractor's Applications for Payment, the Design Professional will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

5.2.4 The Design Professional will have authority to reject Work which does not conform to the Contract Documents. Whenever the Design Professional considers it necessary or advisable for implementation of the intent of the Contract Documents, the Design Professional will have authority to require additional inspection or testing of the Work, whether or not such Work is fabricated, installed or completed.

5.2.5 The Design Professional will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples. The Design Professional's action

will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the City, the Contractor or separate contractors, while allowing sufficient time in the Design Professional, judgment to permit adequate review. The Design Professional's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Article 4. The Design Professional's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Design Professional of any construction means, methods, techniques, sequences or procedures.

5.2.6 The Design Professional will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 9.4.

5.2.7 The Design Professional will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the City for the City's review and records written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

5.2.8 The Design Professional will interpret requirements of the Contract Documents on written request of either the City or the Contractor. Design Professional's response to such requests will be made with reasonable promptness. The Design Professional's and/or the City's decision on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

5.3 CLAIMS

5.3.1 A claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time, or any other relief with respect to the terms of the Contract. The term "Claim(s)" also includes other controversies, disputes and matters in question between the City and the Contractor arising out of or relating to the Contract Documents, including Claims based upon breach of contract, mistake, misrepresentation, or other cause for Contract Modification or revision. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

5.3.2 Claims by the Contractor must be made promptly, and no later than within fourteen (14) days after occurrence of the event giving rise to such Claim. Claims must be made by written notice. Such notice shall include a detailed statement setting forth all reasons for the Claim and the amount of additional money and additional time claimed by the Contractor. All claims not made in the manner provided herein shall be deemed waived and of no effect. The Contractor shall furnish the City and the Design Professional such timely written notice of any Claim provided for herein, including, without limitation, those in connection with alleged concealed or unknown conditions, and shall cooperate with the City and the Design Professional in any effort to mitigate the alleged or potential damages, delay or other adverse consequences arising out of the condition which is the cause of such a Claim.

5.3.3 Pending final resolution of a Claim, the Contractor shall proceed diligently with performance of the Contract and the City shall continue to make payments in accordance with the Contract Documents.

5.3.4 If conditions are encountered at the site which are (1) sub-surface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the Contractor shall be given to the City and the Design Professional promptly before conditions are disturbed and in no event later than fourteen (14) days after first observance of the conditions. The City and the Design Professional will promptly investigate such conditions and, if they differ materially as provided for and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, an equitable adjustment in the Contract Sum or Contract Time, or both shall be made, subject to the provisions and restrictions set forth below. If the City determines that the conditions at the site are not materially different from those conditions set forth above and that no change in the terms of the Contract is justified, the City shall so notify the Contractor in writing. It is expressly agreed that no adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition which does not differ materially from those conditions disclosed or which reasonably should have been disclosed by the Contractor's (1) prior inspections, tests, reviews and preconstruction services for the Project, or (2) inspections, tests, reviews and preconstruction services which the Contractor had the opportunity to make or should have performed in connection with the Project. The City assumes no responsibility for any conclusions or interpretations based upon information relating to sub-surface or other

site conditions made available by the City. The City and the Design Professional do not warrant the accuracy of any information relating to sub-surface conditions contained in reports and drawings made available to the Contractor and which are not Contract Documents. The Contractor may not rely upon the accuracy or completeness of such reports and drawings and should perform its own tests and investigations of the same. The Contractor shall make no claim against the City or Design Professional for any inaccuracy of these reports or drawings or that the physical conditions are different than those indicated in such reports and drawings. Further, the possible location of existing utilities are indicated on the drawings. This information has been obtained from sources available to the City, but the City does not represent or warrant that this information is accurate or complete. The Contractor may not rely on the accuracy of the possible locations indicated on the drawings. It is the Contractor's responsibility to verify and determine the actual field location, character, material, depth, size, and connections of the utilities indicated on the drawings prior to excavation, boring or installation by contacting utility owners and by prospecting. It is the Contractor's responsibility to maintain, relocate, reroute, remove and restore such utilities with the lowest possible interference with such services.

5.3.5 If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Said notice shall detail and itemize the amount of all claims and shall contain sufficient data to permit evaluation of same by the City Manager. No such Claim shall be valid unless so made. If the Contractor believes additional cost is involved for reasons including, but not limited to, (1) a written interpretation from the Design Professional (2) an order by the City to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Design Professional (4) failure of payment by the City, (5) termination of the Contract by the City, (6) the City's suspension or (7) other reasonable grounds, such Claim shall be filed in accordance with the procedure established herein. The Contractor shall keep and maintain, and shall cause its Subcontractors to keep and maintain all books, records, accounts and other documents (hereinafter "records") that are sufficient to accurately and completely reflect all costs incurred pursuant to this Contract which may be the basis of a change request or Claim by the Contractor. All such records shall be kept for three (3) years from the date of final completion of the construction. The City, the Design Professional any federal or state agency providing funding for this Project and their representatives shall have access to all such records maintained by the Contractor or its Subcontractors, for the purpose of auditing and verifying the Contractor's costs or any other costs claimed due. The Contractor shall include in all Subcontracts and other agreements entered into pursuant to the performance of this Contract a provision to the effect that the Subcontractor or other party shall comply with this provision in the same manner and extent as the Contractor.

5.4 CLAIMS FOR ADDITIONAL TIME

5.4.1 If the Contractor wishes to make Claim for an increase in the Contract Time or Milestone Dates, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work.

5.4.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction. Requests for extension of the Scheduled Completion Date(s) or Milestone Dates due to adverse weather conditions shall include U.S. Weather Bureau Climatological Reports for the months involved, plus a report indicating the average precipitation, temperature, and other climatological data for the past five (5) years from the reporting station nearest the Project site. The five-year average will be the basis for determining the number of adverse weather days and the effect resulting therefrom on construction which the Contractor would normally expect to encounter.

5.5 INJURY OR DAMAGE TO PERSON OR PROPERTY

5.5.1 If the Contractor suffers injury or damage to person or property because of an act or omission of the City, through its Design Professional or a separate contractor of the City or any of their agents, or of others for which they may be legally liable, the Contractor shall give the City written notice of such injury or damage, whether or not insured, within a reasonable time not exceeding fourteen (14) days after first observance. The notice shall provide sufficient detail to enable the City to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Subparagraphs 5.3.5.

ARTICLE 6 - SUBCONTRACTORS

6.1 DEFINITIONS

6.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

6.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

6.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

6.2.1 No later than ten (10) days after the award of the Contract, or sooner as required by the Contract Documents, the Contractor shall furnish the City and the Design Professional in writing, with the name of each Subcontractor. The Design Professional will promptly reply to the Contractor in writing stating whether or not the City, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Design Professional to reply promptly shall constitute notice of no reasonable objection to acceptance of said Subcontractor. The Contractor shall not contract with a proposed person or entity to whom the Design Professional has made reasonable and timely objection.

6.2.2 If the Design Professional has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Design Professional has no reasonable objection. The Contract Sum shall be increased by the difference between the subcontract amount proposed by the person or entity recommended by the Contractor and the subcontract amount proposed by the person or entity accepted or designated by Design Professional.

6.2.3 The Contractor shall not change a Subcontractor, person or entity previously selected if the Design Professional makes a reasonable objection to such change prior to award of the contract.

6.2.4 The Contractor represents and warrants that no Subcontractor or Sub-subcontractor has been debarred, declared ineligible or suspended or proposed for debarment, declared ineligible or voluntarily excluded from participating in projects by any federal, state or local department or agency or the City of St. Joseph. In the event a Subcontractor or Sub-subcontractor of the Contractor has been or is proposed for debarment, suspension or declared ineligible or voluntarily excluded from participating in this Project, the City shall have the right in its absolute discretion to (1) stop all Work until such Subcontractor or Sub-subcontractor is removed by the Contractor from participating in this Project or (2) immediately terminate this Contract. The rights provided to the City under this clause are in addition to all other rights the City may possess as provided for by law or as provided for in the Contract Documents.

6.3 SUBCONTRACTUAL RELATIONS

6.3.1 By appropriate agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the City, for the benefit of the City. Each subcontract agreement shall preserve and protect the rights of the City under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound.

6.3.2 All agreements between the Contractor and a Subcontractor or supplier shall contain provisions whereby the Subcontractor or supplier waives all rights against the City, the Design Professional, the Design Professional's Consultants, the Contractor and all other additional insureds for all losses and damages caused by, arising out of, or resulting from any of the perils covered by property insurance coverage required of the Contractor in the Contract Documents. If insurers on any such policies require separate waiver forms to be signed by any Subcontractor or supplier, the Contractor shall obtain the same.

6.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

6.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the City provided that:

(a) assignment is effective only after termination of the Contract by the City for cause pursuant to Paragraph 15.1 and only for those subcontract agreements which the City accepts by notifying the Subcontractor in writing; and

(b) assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

6.4.2 Each subcontract shall specifically provide that the City shall only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the City's exercise of any rights under this conditional assignment.

ARTICLE 7 - DISADVANTAGED BUSINESS ENTERPRISE ("DBE") PROGRAM

7.1 DEFINITIONS

7.1.1 "City" means the City of St. Joseph, Missouri.

7.1.2 "Disadvantaged business enterprise ("DBE")" means a small business concern:

(a) which is at least fifty one percent (51%) owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, which at least fifty one percent (51%) of the stock is owned by one or more socially and economically disadvantaged individuals; and

(b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Or

(a) which is at least fifty one percent (51%) owned by one or more women individuals; or, in the case of any publicly owned business, which at least fifty one percent (51%) of the stock is owned by one or more women individuals; and

(b) whose management and daily business operations are controlled by one or more women individuals who own it.

7.1.3 "Goal" means a formal condition of the Agreement (to use DBEs) that must be addressed by the Contractor, but that exceptions may be granted if appropriate documentation of good faith effort is provided.

7.1.4 "Good faith effort" means a good-faith, affirmative action to include, encourage and utilize DBEs in City contracts that are financed, in whole or in part, by federal funds.

7.1.5 "Requirement" means a formal condition of the Agreement (to use DBEs) that must be addressed by the Contractor, and that no exceptions may be granted.

7.1.6 "Small business concern" means a small business as defined by Section 3 of the Small Business Act and Appendix B, (Section 106[c]), Determinations of Business Size.

7.1.7 "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Asian-Indian Americans, Asian-Pacific Americans, Black Americans, Hispanic Americans, Native Americans or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act.

(a) "Asian-Indian Americans" include persons whose origins are from India, Pakistan, and Bangladesh;

(b) "Asian-Pacific Americans" include persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of Pacific and the Northern Marianas;

(c) "African Americans" include persons having origins in any of the Black racial groups of Africa;

(d) "Hispanic Americans" include persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race; and

(e) "Native Americans" include persons who are American Indians, Eskimos, Aleuts or Native Hawaiians.

7.2 GENERAL POLICY

7.2.1 It is the policy of the City of St. Joseph, Missouri that DBEs shall have the maximum opportunity to participate in the performance of contracts financed, in whole or in part, with federal funds. Consequently, the DBE requirements apply to this Agreement.

7.2.2 The Contractor shall ensure that DBEs have the maximum opportunity to participate in the performance of contracts financed, in whole or in part, with federal funds. In this regard, the Contractor shall make sufficient good faith efforts, in accordance with all applicable statutes or regulations, to ensure that DBEs have the maximum opportunity to compete for, and perform, subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical disability in the award and performance of subcontracts.

7.2.3 It is further the policy of the City to promote the development and increase the participation of DBEs. DBE involvement in all phases of the City's procurement activities is encouraged.

7.2.4 If a specific DBE goal or requirement is assigned to this Agreement, it will be clearly stated in the Special Conditions and if the Contractor is found to have failed to exert sufficient good faith efforts to involve DBEs in the work contemplated, the City may declare any bid(s) submitted by said Contractor non-responsive. If a goal or requirement is is not clearly stated in the Special Conditions, it will be understood that no specific goal or requirement is assigned to this Section.

7.3 GENERAL PROCEDURE

7.3.1 The Contractor and its subcontractors shall ensure that DBEs have the maximum opportunity to participate in the performance of contracts and subcontracts financed, in whole or in part, with federal funds. In that regard, the following procedure shall be followed, to ensure that DBEs have the maximum opportunity to compete for and perform all or part of this Agreement:

(a) All prospective bidders for a project shall be apprised of the desired DBE participation percentages, if any, and of the funding source(s) through all advertisements.

(b) All prospective bidders must provide to the designated project manager, at the time a bid is submitted, their DBE participation solicitation methods/documentation.

(c) Bids shall be reviewed by the designated project manager, who shall determine whether or not the DBE goal or requirement is met.

(i) If the goal or requirement is met, the designated project manager shall request copies of the DBE Certification from each DBE firm listed. Status should

be verified with the state listing and DBEs whose certification is more than two (2) years old must recertify.

(ii) If the goal or requirement is not met, the designated project manager shall review the bid to determine whether a good faith effort was made by the Contractor to solicit DBE participation in the project. This review should be based on the following methods/documentation:

- Certified mail, return receipt requested, verification slips documenting efforts made by a contractor to involve DBE firms in the project; the listing of state-certified DBE firms should be obtained from either the City Purchasing Agent or MoDOT, and the two mailing lists should be submitted side by side to verify the comprehensiveness of the contacts.
- All responses received from the firms should be attached. Telephone logs are not acceptable documentation and shall be considered inappropriate verification of contract.
- Affidavits of publication in minority owned newspapers, local newspapers and regional newspapers documenting attempts by the Contractor to attract DBE participation.
- A bid shall be deemed non-responsive if any of the following examples apply:
 - No documentation is provided.
 - A thorough DBE solicitation is not demonstrated to document good faith effort on the part of the Contractor.
 - Documented DBE bid responses were deemed “excessive” by the Contractor, but with insufficient support for this position. *Note: While a contractor certainly has a right to obtain the most cost-effective subcontracts available in the field, a “cheaper” bid by a non-DBE firm is not sufficient grounds to justify selection of a non-DBE firm. In the case of fee comparisons, a Contractor would have to demonstrate that a DBE firm’s bid was “excessively” higher than another firm.

(d) After the initial DBE documentation review is completed by the designated project manager, an overview and general recommendation shall be attached to the information and forwarded to the Purchasing and Legal Departments for their review and comment. Assuming concurrence, and if the project is federally funded, the issue of DBE goal or requirement status should be documented in the transmittal letter of the funding agency. Formal acceptance and concurrence must be obtained from the funding agency prior to submitting the Agreement to the City Council.

(e) If the various City departments that have reviewed the documentation/information provided determine that it is unacceptable, the bid should be deemed non-responsive and the next bid should be considered.

7.3.2 Where the Contractor is found to have failed to exert sufficient good faith efforts to involve DBEs in the work contemplated, the City may declare any bid(s) submitted non-responsive.

7.3.3 The Contractor shall retain all records and documents for a reasonable period of time following performance of this Agreement to indicate compliance with the City’s DBE program. These records and documents shall be made available at reasonable times and places for inspection by any authorized representative of the City and will be submitted to the City upon request.

7.3.4 The City shall provide affirmative assistance as may be reasonably necessary to assist the Contractors in implementing their programs for DBE participation. This assistance may include the following, upon request:

- Identification of qualified DBEs
- Available listing of Minority Assistance Agencies
- Holding bid conferences to emphasize goals or requirements

ARTICLE 8 - CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTORS

8.1 CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

8.1.1 The City reserves the right to perform construction or operations related to the Project with the City's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions relating to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the City, the Contractor shall make such Claim as provided elsewhere in the Contract Documents.

8.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate City-Contractor Contract.

8.1.3 The City shall provide for coordination of the activities of the City's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the City in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the City until subsequently revised.

8.2 MUTUAL RESPONSIBILITY

8.2.1 The Contractor shall afford the City and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

8.2.2 If part of the Contractor's Work depends for proper execution on results upon construction or operations by the City or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Design Professional apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the City's or separate contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work.

8.2.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

8.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the City or separate contractors.

8.2.5 Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Paragraph 5.3.

8.3 CITY'S RIGHT TO CLEAN UP

8.3.1 If a dispute arises among the Contractor, separate contractors and the City as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the City may clean up and allocate the cost among those responsible as the Design Professional determines to be just.

ARTICLE 9 - CHANGES IN THE WORK

9.1 CHANGES

9.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 9 and elsewhere in the Contract Documents.

9.1.2 A Change Order shall be based upon agreement among the City, through its Design Professional, and the Contractor; a Construction Change Directive requires agreement by the City, through its Design Professional, and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Design Professional alone.

9.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. Except as permitted in Paragraph 9.3, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the City has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment to the City, shall be the basis of any Claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

9.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the City or the Contractor, the applicable unit prices shall be equitably adjusted.

9.1.5 If the City and the Contractor cannot agree on a Claim for an adjustment in the Contract Sum, any adjustment shall be determined by the City Manager in accordance with Article 5. The value of any Work covered by a Change Order, or of any Claim for an adjustment in the Contract Sum shall be determined in accordance with the methods set forth in Paragraph 9.3.

9.2 CHANGE ORDERS

9.2.1 A Change Order is a written instrument signed by the City and the Contractor, stating their agreement upon all of the following:

- (a) A change in the Work;
- (b) the amount of the adjustment in the Contract Sum, if any; and
- (c) the extent of the adjustment in the Contract Time, if any.

9.2.2 Methods used in determining adjustments to the Contract Sum shall be those listed in Subparagraph 9.3.3.

9.2.3 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule. In the event a Change Order increases the Contract Sum, the Contractor shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Contract Documents and signed.

9.3 CONSTRUCTION CHANGE DIRECTIVES

9.3.1 A Construction Change Directive is a written order prepared by the Design Professional and signed by the City and Design Professional, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The City may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract

consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

9.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

9.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods as determined by the City:

- (a) mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- (b) unit prices stated in the Contract Documents or subsequently agreed upon;
- (c) cost to be determined in a manner and agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- (d) as provided in Subparagraph 9.3.6.

9.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the City and Design Professional of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

9.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

9.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, or the parties cannot agree as to the adjustment resulting from any Claim made by the Contractor entitling the Contractor to an equitable adjustment, the method and the adjustment shall be determined on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, allowance for overhead and profit as set forth in Paragraph 9.5. In such case, and also under Subparagraph 9.3.3, the Contractor shall keep and present, in such form as the City may prescribe, an itemized accounting together with appropriate supporting data. Costs for the purposes of this Subparagraph 9.3.6 shall be limited to the following:

- (a) Payroll costs for employees in the direct employ of the Contractor in the performance of the Work. Such employees shall only include laborers, mechanics, craftsmen and foremen. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll cost shall include salaries and wages plus the cost of fringe benefits required by agreement or custom and social security contributions, unemployment, payroll taxes and workers' or workmen's compensation insurance. The expenses of performing Work after regular working hours, on Saturdays, Sundays or legal holidays shall not be included in the above, unless approved in advance by the City;
- (b) Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed and rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others. The rental value of the Contractor's own equipment shall not be more than eighty percent (80%) of the rates in the current edition of "Compilation of Rental Rates for Construction Equipment" prepared by Associated Equipment Distributors, Oak Brook, Illinois, and the aggregate amounts charged to the City for such equipment shall not exceed fifty percent (50%) of the fair market value. All trade discounts and refunds and returns from sale of surplus materials and equipment shall ensure to the City, and the Contractor shall make provisions so that they may be obtained;
- (c) Payments made by the Contractor to Subcontractors for Work performed or furnished by Subcontractors. If required by the City, the Contractor shall obtain competitive bids from subcontractors acceptable to the City, and the Contractor shall deliver such bids to the City, which will then determine which bids to accept, if any. If any subcontract provides that the

Subcontractor is to be paid on the basis of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as the Contractor's Cost of the Work and fee as provided for herein. All subcontracts shall be subject to all other provisions of the Contract Documents insofar as applicable; and

(d) Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work.

9.3.7 The term "Cost of the Work" shall not include any of the following:

(a) Payroll costs and other compensation for the Contractor's Project Superintendent, project manager, officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, time-keepers, clerks and other personnel employed by the Contractor whether at the site or in the Contractor's principal or a branch office for general superintendence and administration of the Work and not specifically covered by Paragraph 9.3.6, all of which are to be costs covered by the Contractor's fee as set forth in Paragraph 9.5;

(b) Expense of the Contractor's principal and branch offices other than the Contractor's office at the site;

(c) Any part of the Contractor's capital expenses, including interest of the Contractor's capital employed for the Work and charges against the Contractor for delinquent payments;

(d) Costs due to the negligence of the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including, but not limited to, the correction of defective work, disposal of materials or equipment wrongly supplied and making good any damage to property; and

(e) other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 9.3.6.

9.3.8 When the City and the Contractor agree with the determination made by the City concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

9.4 MINOR CHANGES IN THE WORK

9.4.1 The City and the Design Professional will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the City and the Contractor. The Contractor shall carry out such written orders promptly.

9.5 AGREED OVERHEAD AND PROFIT RATES

9.5.1 For any adjustments to the Contract Sum which are based on other than the unit prices method, the Contractor agrees to charge, and accept, as payment for overhead and profit, the following percentages of costs attributable to the change in the Work:

(a) for costs incurred under Paragraph 9.3.6(a), the Contractor's fee shall be ten percent (10%);

(b) for costs incurred under Paragraph 9.3.6(b), the Contractor's fee shall be ten percent (10%);

(c) for costs incurred under Paragraph 9.3.6(c), the Contractor's fee shall be five percent (5%). Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of this Section is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of ten percent (10%) of the costs incurred by the Subcontractor under Paragraphs 9.3.6(a) and ten percent (10%) of

the costs identified in Paragraph 9.3.6(b) and that any higher tier Subcontractor and the Contractor will each be paid a fee of five percent (5%) of the amount paid to the next lower tier Subcontractor;

(d) no fee shall be payable on the basis of costs set forth in Paragraph 9.3.6(d).

9.5.2 The amount of credit to be allowed by the Contractor to the City for any change which results in a net decrease in cost will be the amount of actual net decrease in cost plus a deduction in the Contractor's fee by an amount equal to five percent (5%) of such net decrease. When both additions and credits are involved in any one change, the allowance for overhead and profits shall be figured on the basis of net increase, if any, with respect to that change.

9.5.3 Overtime, including overhead and profit, when specifically authorized by the City and not as an Extraordinary Measure, shall be paid for by the City on the basis of premium payment only, plus the cost of insurance and taxes based on the premium payment period.

ARTICLE 10 - TIME

10.1 DEFINITIONS

10.1.1 Contract Time is the period of time, including authorized adjustments, allotted in the Contract for Construction for Substantial Completion and Final Completion of the entire or portions of the Work as defined in the Contract Documents.

10.1.2 The date of Substantial Completion is the date certified by the Design Professional in accordance with Paragraph 11.8.

10.1.3 Final Completion shall be when the Contractor has completed all work strictly in accordance with the Contract Documents and has satisfied all conditions precedent to Final Payment, including, but not limited to, its obligations under Paragraph 11.10.

10.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

10.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

10.2.1 The date of commencement shall be the date fixed in a Notice to Proceed issued by the City to the Contractor. This date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

10.2.2 The Contractor shall diligently prosecute the Work and meet the Milestone Dates and achieve Substantial Completion and Final Completion of the entire Work and Final Completion not later than the time provided in the Contract for Construction, subject to adjustments of this Contract Time as provided in the Contract Documents.

10.3 PROGRESS AND COMPLETION

10.3.1 The Contract Time stated in the Contract Documents is of the essence of the Contract and may only be changed by a Change Order. By executing the Contract the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

10.3.2 The Contractor shall not knowingly, except by agreement or instruction of the City in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 13 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.

10.3.3 The Contractor shall proceed expeditiously with adequate forces and shall meet Milestone Dates and achieve Substantial Completion and Final Completion within the Contract Time. Time is of the essence to the Contract Documents and all obligations thereunder.

10.4 DELAYS AND EXTENSION OF TIME

10.4.1 If the Contractor is delayed at any time in progress of the Work by an act or neglect of the City, through its Design Professional, or of an employee of either, or of a separate contractor employed by the City, or by changes ordered in the Work, or by acts of God, or by other causes which the Design Professional determines may justify delay, then the Contract Time shall be extended by Change Order to the extent such delay will prevent the Contractor from achieving Substantial Completion and/or Final Completion within the Contract Time and if the performance of the Work is not, was not or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (1) is not caused, or could not have been anticipated, by the Contractor, (2) could not be limited or avoided by the Contractor's timely notice to the City of the delay and (3) is of a duration not less than one (1) day. Delays attributable to and within the control of a Subcontractor or supplier shall not justify an extension of the Contract Time.

10.4.2 Claims relating to time shall be made in accordance with applicable provisions of Paragraph 5.3.

10.4.3 Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under this Article, shall be the sole remedy of the Contractor for any (1) delay in the commencement, prosecution or completion of the Work, (2) hindrance or obstruction in the performance of the Work, (3) loss of productivity, or (4) other similar claims due to or caused by any events beyond the control of both the City and the Contractor. In no event shall the Contractor be entitled to any compensation or recovery of any damages or any portion of damages, including, without limitation, consequential damages, lost opportunity costs, impact damages, or similar remuneration, resulting from delays caused by or within the control of the Contractor or by acts or omissions of the Contractor or its Subcontractors or delays beyond the control of both the City and Contractor. Delays beyond the control of the City and Contractor including, without limitation, acts of God, abnormal weather conditions, or acts or neglect of utility owners. If the Contractor contends that delay, hindrance, obstruction or other adverse condition results from acts or omissions of the City, the Design Professional, or any separate contractor of the City, the Contractor shall promptly provide written notice to the City. The Contractor shall only be entitled to an adjustment in the Contract Sum to the extent that such acts or omissions continue after the Contractor's written notice to the City of such acts or omissions. The City's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling or correction of the Work) regardless of the extent or frequency of the City's exercise of such rights or remedies, shall not be the basis of any Claim for an increase in the Contract Sum or Contract Time.

10.4.4 If the Contractor contends that it is prevented from completing any part of the Work within the Contract Time or Milestone Dates due to acts or omissions of the City, the Contract Time and Contract Sum will be increased only to the extent that such acts or omissions continue after the Contractor furnishes written notice of such acts or omissions.

10.4.5 If the Contractor submits a progress report indicating, or otherwise expressing an intention to achieve, completion of the Work prior to any completion date required by the Contract Documents or expiration of the Contract Time, no liability of the City to the Contractor for any failure of the Contractor to so complete the Work shall be created or implied.

ARTICLE 11 - CONTRACT SUM; PAYMENTS AND COMPLETION

11.1 CONTRACT SUM

11.1.1 The City shall compensate the Contractor for all Work described herein and in the Contract Documents the Contract Sum set forth in the Contract for Construction, subject to additions and deletions as provided hereunder.

11.2 SCHEDULE OF VALUES

11.2.1 The Contractor shall promptly after being awarded the Contract submit to the City and the Design Professional a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Design Professional may require. This schedule, unless objected to by the City or the Design Professional, shall be used as a basis for reviewing the Contractor's Applications for Payment.

11.3 APPLICATIONS FOR PAYMENT

11.3.1 Within the time frame set forth in Paragraph 11.6, the Contractor shall submit to the Design Professional an itemized Application for Payment for operations completed in accordance with the Schedule of Values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Design Professional may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage as provided for herein.

11.3.2 Such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in Change Orders.

11.3.3 Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

11.3.4 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the City:

(a) the Contractor's updated schedule or a progress report, with such shop drawings, schedules, procurement schedules, value of material on hand included in the Application and other data specified in the specifications;

(b) Weekly employee payrolls for the Contractor and all Subcontractors. Each Application for Payment shall be accompanied by a certified copy of employee payrolls, submitted on Federal Form WH-347 and covering the Work performed during the time covered by the Application. No payment will be due and no Application for Payment processed by the City until all pertinent payroll documents have been completed and approved;

(c) If required by the City, a current Contractor's receipt and partial release form and acknowledged sworn statement showing all Subcontractors and/or materialmen with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor and materialmen in the requested progress payment and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and materialmen; and

(d) All information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Design Professional.

11.3.5 In addition to the requirements set forth in Paragraph 11.3.4, the City shall not be obligated to make any progress payments until the Contractor has provided the City and the Design Professional:

(a) certificate(s) of insurance as required herein;

(b) a signed copy of this Contract;

(c) evidence that performance and payment bonds have been purchased as required herein; and

(d) other documents and certifications required by the Contract Documents.

11.3.6 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored on or off site for subsequent incorporation in the Work.

11.3.7 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment, free and clear of any liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. The Contractor further expressly undertakes to defend and hold harmless the City, at the Contractor's sole expense, against any such claims, liens, actions, lawsuits or proceedings.

11.3.8 The Application for Payment shall constitute a representation by the Contractor to the City that the Work has progressed to the point indicated; the quality of the Work covered by the Application for Payment is in accordance with the Contract Documents; and the Contractor is entitled to payment in the amount requested.

11.4 CERTIFICATES FOR PAYMENT

11.4.1 The Design Professional will, within ten (10) days after receipt of the Contractor's Application for Payment, either issue a Certificate for Payment, with a copy to the Contractor, for such amount as the Design Professional determines is properly due, or notify the Contractor in writing of the Design Professional reasons for withholding certification in whole or in part as provided in Subparagraph 11.5.1.

11.4.2 RESERVED

11.4.3 In the event that the City erroneously overpays the Contractor, whether on current or final estimates of Unit Price Work or otherwise, the Contractor shall reimburse the City for the sum overpaid and the Contractor and its Surety shall be liable therefor until paid.

11.5 DECISIONS TO WITHHOLD CERTIFICATION

11.5.1 The Design Professional may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the City. If the Design Professional is unable to certify payment in the amount of the Application, the Design Professional will notify the Contractor as provided in Subparagraph 11.4.1. If the Contractor and Design Professional cannot agree on a revised amount, the Design Professional will promptly issue a Certificate for Payment for the amount for which the Design Professional is able to determine is due the Contractor. The Design Professional may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Design Professional opinion to protect the City from loss because of:

- (a) defective Work not remedied or damage to completed Work;
- (b) failure to supply sufficient skilled workers or suitable materials;
- (c) third party claims filed or reasonable evidence indicating probable filing of such claims;
- (d) failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- (e) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- (f) damage to the City or another contractor;
- (g) reasonable evidence that the Work will not be completed within the Contract Time;
- (h) the Contractor's failure to comply with applicable Laws; or
- (i) failure to carry out the Work in accordance with the Contract Documents.

11.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

11.6 PROGRESS PAYMENTS

11.6.1 Based upon Applications for Payment submitted to the Design Professional by the Contractor and Certificates for Payment issued by the Design Professional, the City shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

11.6.2 The period covered by each Application for Payment shall be one (1) calendar month ending on the last day of the month.

11.6.3 The City shall make payment to the Contractor not later than thirty (30) days after the City receives a properly detailed Application for Payment which is in compliance with the Contract Documents. The City shall not have the obligation to process or pay such Application for Payment until it receives an Application for Payment satisfying such requirements. Payments by the City to the Contractor and by the Contractor and all tiers of Subcontractors to all of their subcontractors and suppliers shall be paid and subject to the provisions of RSMo. § 34.057. The Contractor shall require that this term be incorporated into all tiers of subcontracts. In the event of a conflict between the terms of RSMo. § 34.057 and other provisions of the Contract Documents, the terms of RSMo. § 34.057, to the extent applicable, shall govern.

11.6.4 Based on the Schedule of Values Submitted by the Contractor, Applications for Payment submitted by the Contractor shall indicate the percentage of completion of each portion of the Contractor's Work as of the end of the period covered by the Application for Payment.

11.6.5 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

(a) Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completed of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the Schedule of Values, less retainage of five percent (5%) unless the Design Professional has determined and certified a higher percentage of retainage not to exceed ten percent (10%) for the Project in accordance with RSMo. § 34.057, the Missouri Prompt Pay Act;

(b) Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, less retainage;

(c) Subtract the aggregate of previous payments made by the City; and

(d) Subtract amounts, if any, for which the Design Professional has withheld or nullified a Certificate of Payment as provided in Paragraph 11.5.

11.6.6 The Contractor shall promptly pay each Subcontractor and Supplier, upon receipt of payment from the City, out of the amount paid to the Contractor on account of such Subcontractor's or Supplier's portion of the Work, the amount to which said Subcontractor or Supplier is entitled, reflecting percentages actually retained from payments to the Contractor on account of each Subcontractor's or Supplier's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor or Supplier, require each Subcontractor or Supplier to make payments to Sub-subcontractors in similar manner.

11.6.7 The City shall not have an obligation to pay or to see to the payment of money to a Subcontractor or Supplier except as may otherwise be required by Law.

11.6.8 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the City shall not constitute acceptance of Work not in accordance with the Contract Documents.

11.7 FAILURE OF PAYMENT

11.7.1 If the City is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the City. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the City, or the City incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the City shall have an absolute right to offset such amount against the Contract Sum and may, in the City's sole discretion, elect either to: (1) deduct an amount equal to that to which the City is entitled from any payment then or thereafter due the Contractor from the City, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that to which the City is entitled.

11.8 SUBSTANTIAL COMPLETION

11.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the City can occupy or utilize the Work for its intended use; provided, however, that as a condition precedent to Substantial Completion, the City has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project.

11.8.2 When the Contractor considers that the Work, or a portion thereof which the City agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Design Professional a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Design Professional will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Design Professional's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by Design Professional. The Contractor shall then submit a request for another inspection by the Design Professional to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Design Professional will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the City and the Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate which shall identify all non-conforming, defective and incomplete Work. The Certificate of Substantial Completion shall be submitted to the Contractor for its written acceptance of responsibilities assigned to it in such Certificate. Warranties required by the Contract Documents shall commence on the date of final completion and acceptance of the entire Work.

11.8.3 At the date of Substantial Completion, the Contractor may apply for, and if certified by the Design Professional subject to the provisions herein, shall increase total payments to one hundred percent (100%) of the Contract Sum less two hundred percent (200%) of the value of any incomplete Work and unsettled claims, as determined by the Design Professional.

11.9 PARTIAL OCCUPANCY OR USE

11.9.1 The City may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the City and the Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, security, maintenance, heat, utilities, damage to the Work and insurance. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Design Professional as provided under Subparagraph 11.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the City and the Contractor.

11.9.2 Immediately prior to such partial occupancy or use, the Design Professional and the Contractor jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

11.10 FINAL COMPLETION AND FINAL PAYMENT

11.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance, and upon receipt of a final Application for Payment, the Design Professional will promptly make such inspection and, when the Design Professional finds the Work acceptable under the Contract Documents and the Contract fully performed except for Contractor's obligations to correct non-conforming work and to satisfy other requirements and obligations which survive final payment ("final completion"), the Design Professional will promptly issue a final Certificate for Payment stating that to the best of the Design Professional's knowledge, information and belief, and on the basis of the Design Professional's observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance

found to be due the Contractor and noted in said final Certificate is due and payable; otherwise, the Design Professional will return the Contractor's Final Application for Payment to the Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case the Contractor shall make the necessary corrections and resubmit the Application. Submission of a Final Application for Payment shall constitute a further representation that conditions listed in Subparagraph 11.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Design Professional as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Design Professional until all warranties and guarantees have been received and accepted by the City.

11.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Design Professional and the City (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied in accordance with all applicable Laws, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the City, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety to final payment, (5) data establishing payment or satisfaction of obligations, such as receipts, releases and waivers, to the extent and in such form as may be designated by the City, (6) reproducible record and marked-up drawings, (7) completion of all "punch list work", (8) all applicable maintenance and operating instructions and warranties and guarantees have been received and accepted by the City, (9) subject to final payment, a final release of the City relating to any and all claims related to the Project, and (10) all documents required by the Contract Documents and such data and other documents as the Design Professional may reasonably require.

11.10.3 Final Payment constituting the entire unpaid balance due shall be paid by the City to the Contractor within thirty (30) days after the City's receipt of the Contractor's Final Application for Payment certified by the Design Professional which satisfies all the requirements of the Contract Documents and City's receipt of all information and documents set forth in Paragraph 11.10.

11.10.4 The acceptance by the Contractor of its Final Payment shall be and operate as a release of all claims of the Contractor against the City for all things done or furnished or relating to the Work and for every act or alleged neglect of the City arising out of the Work.

11.10.5 No payment under this Contract shall constitute acceptance by the City of any Work or act not in accordance with the requirements of the Contract Documents.

11.10.6 In the event that the Missouri Department of Labor and Industrial Relations has determined that a violation of R.S.Mo. § 292.675 has occurred and that a penalty as described in Subsection 12.3.1 shall be assessed, the City shall withhold and retain all sums and amounts due and owing when making payments to Contractor under this contract.

ARTICLE 12 - PROTECTION OF PERSONS AND PROPERTY

12.1 SAFETY PRECAUTIONS AND PROGRAMS

12.1.1 The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take all precautions for protection of employees, equipment and personnel on or near the job site.

12.1.2 In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Design Professional in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the City and the Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the City and the Contractor, or in accordance with final determination by Design Professional. The term "rendered harmless" shall be interpreted to mean that levels of asbestos and polychlorinated biphenyls are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the City have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any materialman or supplier or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials

to be incorporated into the Work which are hazardous, toxic or comprised of any items that are hazardous or toxic. The Contractor shall comply with all applicable federal, state and local environmental protection rules, laws and regulations and accept responsibility for compliance with all environmental quality standards, limitations and permit requirements promulgated thereunder, including, but not limited to, the City's noise control ordinance, federal and state air quality standards for fugitive dust control, prevention of surface and groundwater contamination and hazardous and other waste disposal practices and procedures. If the City is determined by any federal, state or local government agency, department, board or commission, or in any judicial proceedings to have violated any such environmental protection rules, laws or regulations as a result of the Contractor's acts or omissions, the Contractor agrees to indemnify and hold harmless the City from any and all prosecutions, payment of any and all fines or penalties, and the cost of abatement and remediation.

12.2 SAFETY TRAINING

12.2.1 Contractor shall provide a 10 hour Occupational Safety and Health Administration (OSHA) construction safety program for all employees who will be on-site during this project. The construction safety program shall include a course in construction safety and health approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations which is at least as stringent as an approved OSHA program as required by R.S.Mo. § 292.675.

12.2.2 Contractor shall require all on-site employees who have not previously completed the OSHA safety program as required by R.S.Mo. § 292.675 to complete the program within 60 days after the commencement of work on the project.

12.2.3 Contractor acknowledges and agrees that any of contractor's employees found on the project site without documentation of the successful completion of an OSHA construction safety program as required by R.S.Mo. § 292.675 shall be required to produce such documentation within 20 days or will be subject to removal from the project.

12.2.4 Contractor shall require all of its subcontractors to comply with the requirements of this section and R.S.Mo. § 292.675.

12.3 NOTICE OF PENALTIES FOR FAILURE TO PROVIDE SAFETY TRAINING

12.3.1 Pursuant to R.S.Mo. § 292.675, Contractor shall forfeit to the City as a penalty \$2500 dollars, plus \$100 for each on-site employee employed by contractor or subcontractor, for each calendar day, or portion thereof, such on-site employee is employed without the construction safety training required under Subsection 12.2.1 above.

12.3.2 The penalties described in Subsection 12.3.1 of this Section shall not begin to accrue until the time periods allowed for in Subsections 12.2.2 and 12.2.3 above have elapsed.

12.3.3 Violations of R.S.Mo. § 292.675 and the imposition of the penalties described in this Section shall be investigated and determined by the Missouri Department of Labor and Industrial relations.

12.4 SAFETY OF PERSONS AND PROPERTY

12.4.1 The Contractor shall take all reasonable precautions for safety of, and shall not cause damage, injury or loss to:

- (a) employees on the Work and other persons who may be affected thereby;
- (b) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- (c) other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities, including, but not limited to, telephone, telegraph or power lines, water or fire hydrants, water mains, pipelines, sewers, conduits and other accessories and appurtenances of a similar nature, not designated for removal, relocation or replacement in the course of construction.

12.4.2 The Contractor shall be solely responsible for materials delivered and Work performed until completion and final acceptance of the entire construction thereof. The Contractor shall bear the risk of injury, loss or damage to any and all parts of the Work for whatever cause, whether arising from the execution or from the non-execution of Work. The Contractor shall promptly rebuild, repair or restore Work and materials which have been damaged or destroyed from any causes before final completion, and shall bear the expense thereof. The Contractor shall provide security and drainage and erect temporary structures as necessary to protect the Work and materials from damage, including damage from water, flooding, wetness, temperature, dust, environmental conditions and all reasonably anticipated risks. All cement placed in storage shall be properly protected against moisture or other influence detrimental to its quality. The Contractor shall be responsible for materials not delivered to the Work site for which any progress payment has been made to the same extent as if the materials were so delivered. The Contractor's responsibility for materials shall be the same for the City-furnished material under this Contract as for the Contractor-furnished material.

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

12.4.4 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

12.4.5 If the Project involves the construction of roadways, highways, or public thoroughfares, the Contractor shall:

(a) Conduct the Work in such a manner as to insure the least obstruction to traffic

(b) Provide, erect, and maintain all necessary barricades, suitable and sufficient red lights, danger signals and signs; provide a sufficient number of watchmen and flagmen; and take all necessary precautions for the protection of the Work and safety of the public. Streets closed to traffic shall be protected by effective barricades, on which shall be placed acceptable warning signs. All barricades and obstructions shall be illuminated at night, and all lights shall be kept burning from sunset to sunrise.

12.4.6 The Contractor shall not use or store explosive or other hazardous materials or equipment at the Project site or employ any unusual or hazardous methods for execution of the Work unless approved in writing in advance by the City and Design Professional. If such consent is given, the Contractor shall use the highest degree of care to prevent danger to life or property. All explosives shall be stored in a secure and safe manner and in compliance with all existing Laws. The Contractor shall notify, in writing, the Design Professional and all parties affected by the use of explosives in the Work to be performed, and it further agrees to indemnify and hold the City, the Design Professional their agents and servants, harmless from any claim or claims growing out of the use of such explosives, including reasonable attorneys' fees.

12.4.7 The Contractor shall promptly remedy damage and loss to property referred to in Paragraphs 12.2.1(b) and (c) caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Paragraphs 12.2.1(b) and (c), except damage or loss attributable to acts or omissions of the City, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 4.18.

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

12.4.9 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

12.4.10 When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and protect the Work, as necessary, from injury by any cause.

12.4.11 The Contractor shall promptly report in writing to the City and the Design Professional all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the City and the Design Professional.

12.4.12 All articles of historical, scientific or archaeological interest uncovered by the Contractor during progress of the Work shall be reported immediately to the Design Professional. Construction in the vicinity of the discovery will be halted in order to preserve and protect the artifacts until the significance of those resources can be evaluated by a professional archaeologist. The City, in consultation with the State authorities, will issue instructions to the Contractor with respect to the find and disposition of the artifacts.

12.4.13 The movement of construction equipment over bridges and roadways within the Project site is subject to the regulations for load limits on highways which exist or are enacted subsequent to the execution of the Contract. Special permits obtained from the Public Works and Transportation Department will be required when loads exceed those specified in the existing regulations. Any cost connected therewith shall be borne by the Contractor. The special permit, however, does not relieve the Contractor of liability for damage which may result in the moving or operation of equipment. Any type of equipment of such weight or so loaded as to cause damage to drainage structures of any kind, or to any other type of construction, either being constructed or previously constructed, shall not be permitted by the Contractor.

12.4.14 If the Work of the Project involves constructing or providing for detours of any traffic, the Contractor, at its own cost and expense, shall provide for the same and all safety precautions to prevent injury or damage to all persons at the site and the general public. The Contractor, at its own cost and expense, shall comply with all requirements relating to detours as required by the Contract Documents.

12.5 EMERGENCIES

12.5.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 5.3 and Article 10.

ARTICLE 13 - INSURANCE AND BONDS

13.1 CONTRACTOR'S INSURANCE

13.1.1 The Contractor shall secure from the date of the Contract for Construction and maintain for a period as set forth below, insurance of such types and in such amounts specified herein to protect the Contractor, and the interest of the City, against all hazards or risks of loss as herein specified. The form of such insurance, together with the carriers thereof, in each case, shall be approved by the City but, regardless of such approval, it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain coverage shall not relieve the Contractor of any contractual responsibility or obligation. The form and limits of insurance shall be as follows:

COMMERCIAL GENERAL LIABILITY

(a) The Contractor shall secure and maintain from the date of the Contract for Construction and for a period of at least one (1) year from the final completion and acceptance of the Project, commercial general liability insurance. Such insurance shall have liability limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000.00) any one occurrence and Two Million Dollars (\$2,000,000.00) products/completed operations aggregate. If such insurance contains a general annual aggregate limit, it shall separately apply to this Project. Such insurance shall be on an occurrence basis.

(i) Such insurance, to be on comprehensive form, shall protect the Contractor and the City, their agents, servants, employees and officers against any and all claims in connection with or resulting from the Contractor's operations and activities described under this Contract, for personal injuries, occupational sickness, disease, death or damage to property of others including loss of use resulting therefrom, arising out of any construction activity of the Contractor, its

agents, subcontractors or suppliers or any one directly or indirectly employed by the Contractor for whose acts any of them may be legally liable.

(ii) In addition, such general liability insurance policy shall be endorsed to provide blanket contractual liability insurance with the City as additional insured's for this Contract between the Contractor and the City. In particular, the contractual liability insurance shall cover the Contractor's indemnity liability obligations contained in this Contract, as well as all other contractual liability.

(iii) Such general liability insurance shall include products and completed operations coverages, which coverages shall be for limits as specified above which shall remain in effect for a period of at least one (1) year after final completion of the Project under this Contract.

(iv) Such general liability insurance policy shall include personal injury, sickness, disease or death of any person other than the Contractor's employees for the limits listed above.

(v) Such general liability insurance shall include coverage for damages which are sustained by (1) 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 for offenses related to the operations of the Contractor.

(vi) Such general liability insurance policy shall include broad form property damage coverage. The property damage liability coverage under such general liability insurance policy shall contain no exclusion (commonly referred to as XC&U exclusion) relative to blasting, explosion, collapse of buildings, or damage to underground property.

(vii) The general liability insurance policy shall include independent contractors protective liability insurance to protect against bodily injury or property damage claims traceable to negligence of the Contractor's subcontractors or independent contractors, if any.

AUTOMOBILE

(b) The Contractor shall secure and maintain from the date of the Contract for Construction and for a period of at least one (1) year from the final completion and acceptance of the Project insurance, to be on comprehensive form, which shall protect the Contractor against any and all claims for all injuries and all damage to property arising from the use of automobiles, trucks and motorized vehicles, in connection with the performance of Work under this Contract, and shall cover the operation on or off the site of the Work of all motor vehicles licensed for highway use whether they are owned, non-owned or hired. Such insurance shall provide coverage on the basis of the date of any accident. These liability limits shall not be less than the following:

\$1,000,000 combined single limit bodily injury and property damage per accident.

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE

(c) The Contractor shall secure and maintain from the date of the Contract for Construction and for a period of at least one (1) year from the final completion and acceptance of the Project, insurance covering:

(i) claims under workers' or workmen's compensation, disability benefit and other similar employee benefit laws which are applicable to the Work, including

coverage as necessary for any applicable benefits provided under the United States Longshoreman's and Harbor-Worker's Act and the Jones Act;

(ii) claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees under any applicable employer's liability law;

(iii) claims for injury, disease or death, which for any reasons may not fall within the provisions of a workers' compensation law;

(iv) claims for damages because of bodily injury, sicknesses or disease or death of persons other than the Contractor's employees. This policy shall include an "all states" or "other states" endorsement. Contractor shall maintain Workers' Compensation insurance with statutory limits, including Employers' Liability coverage with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence.

13.2 ADDITIONAL INSURED; CERTIFICATES OF INSURANCE AND MISCELLANEOUS

13.2.1 All insurance coverage procured by the Contractor, with the possible exception of workers compensation insurance coverage, shall be provided by insurance companies having policyholder ratings not lower than "A-" and financial ratings not lower than "VIII" in the Best's Insurance Guide, latest edition in effect as of the date of the Contract, or policy holder ratings otherwise deemed acceptable by the City, and subsequently in effect at the time of renewal of any policies required by the Contract Documents. The City shall be endorsed as an additional insured on all commercial general liability, automobile, and property policies of insurance provided by the Contractor hereunder. Insurance coverages required hereunder shall not be subject to a deductible amount on a per-claim basis of more than \$10,000.00 and shall not be subject to a per-occurrence deductible of more than \$25,000.00. Such insurance coverages shall contain a cross liability or severability of interest clause or endorsement. Insurance covering the additional insured shall be primary insurance, and all other insurance covered by the additional insureds shall be excess insurance.

13.2.2 All insurance required hereunder shall provide that the insurer's cost of providing the insureds a defense and appeal, including attorneys' fees, shall be supplementary and shall not be included as part of the policy limits but shall remain the insurer's separate responsibility.

13.2.3 With respect to the insurance required herein, the Contractor shall require its insurance carriers to waive all rights of subrogation against the City and its officers, employees and agents with the exception of Workers' Compensation and Employers' Liability Insurance.

13.2.4 The Contractor shall provide certificate(s) of insurance to the City before the Contractor shall be entitled to any sum of money payable under this Contract. Certificates shall be executed by a duly authorized agent of each of the applicable insurance carriers and state that at least thirty (30) days written notice shall be given the City before any policy covered thereby is changed or canceled. Such certificates shall be in a form acceptable to the City. With respect to all coverages set forth in Article 13 that are to remain in force after final payment, the Contractor shall provide the City an additional certificate evidencing continuation of such coverage which shall be submitted along with the Contractor's application for final payment.

13.2.5 The maintenance in full current force and effect of such forms and amounts of insurance and bonds shall be a condition precedent to the Contractor's exercise or enforcement of any rights under the Contract Documents.

13.2.6 If a part of the Work hereunder is to be sublet, the Contractor shall:

(a) cover any and all Subcontractors in its insurance policies;

(b) require each Subcontractor to secure insurance which will protect said Subcontractor and supplier against all applicable hazards or risks of loss designated in accordance with Article 13 hereunder; and

(c) require each Subcontractor or supplier to assist in every manner possible in the reporting and investigation of any accident, and upon request, to cooperate with any

insurance carrier in the handling of any claim by securing and giving evidence and obtaining the attendance of witnesses as required by any claim or suit.

13.3 PROPERTY INSURANCE

13.3.1 The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance in the amount of the initial Contract Sum as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis without voluntary deductibles. Such property insurance shall be maintained until final payment. This insurance shall include interests of the City, the Contractor, Subcontractors and Sub-subcontractors in the Work.

13.3.2 Property insurance shall be on an all-risk policy form and shall cover physical loss or damage to the Work, temporary buildings, false work, Work in transit including ocean transit, Work in storage at the Project site or another location acceptable to the City and shall cover at least the following perils: theft, vandalism, malicious mischief, collapse, fire, lightning, earthquake, flooding, frost, water damage, freezing, extended coverage and debris removal including demolition occasioned by enforcement of any applicable legal requirements.

13.3.3 If the property insurance requires minimum deductibles, the Contractor shall pay costs not covered because of such deductibles.

13.3.4 This property insurance shall cover portions of the Work stored off the site after written approval of the City at the value established in the approval, and also portions of the Work in transit.

13.3.5 If required by the City, the Contractor shall purchase and maintain boiler and machinery insurance, which shall specifically cover such insured objects during installation and until final acceptance by the City; this insurance shall include interests of the City, the Contractor, Subcontractors and Sub-subcontractors in the Work, and the City and the Contractor shall be named insureds.

13.3.6 The City and the Contractor waive all rights against: (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) separate contractors described in Article 8, if any, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Paragraph 13.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the City. The City or the Contractor, as appropriate, shall require of the separate contractors described in Article 8, if any, and their subcontractors, sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an interest in the property damaged.

13.3.7 A loss insured under the Contractor's property insurance shall be adjusted by the City in good faith and made payable to the City for the insureds, as their interests may appear, subject to requirements of the Contract Documents. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by the appropriate agreements, written where legally required for validity, shall require the Subcontractors to make payments to their Sub-subcontractors in similar manner.

13.3.8 Partial occupancy or use shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The City and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

13.4 PERFORMANCE AND PAYMENT BONDS

13.4.1 The Contractor shall furnish a Performance and Maintenance Bond and a Labor and Material Payment Bond, in form and substance satisfactory to the City and, without limitation, complying with the following specific requirements:

(a) The form and substance of such bonds shall be satisfactory to the City and shall comply with all applicable Laws;

(b) Bonds shall be executed by a responsible surety licensed in Missouri, with a Best's rating of no less than A/XII and shall remain in effect for a period not less than one (1) year following the date of Final Payment or the time required to resolve any items of incomplete Work and the payment of any disputed amounts, whichever time period is longer;

(c) The Performance and Maintenance Bond and the Labor and Material Payment Bond shall each be in an amount equal to the Contract Sum. The Performance and Maintenance Bond may be reduced to fifty percent (50%) of the Contract Sum during the one (1) year correction period as set forth in the Contract Documents;

(d) The Performance and Maintenance Bond shall guarantee the Contractor's execution and completion of the Work within the Contract Time and the correction of defects after completion as required by the Contract Documents;

(e) The Payment Bond shall guarantee the payment of all wages and other amounts payable by the Contractor under its subcontracts or for labor and material as required by applicable Laws;

(f) The Contractor shall require the attorney in fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his power of attorney indicating the monetary limit of such power;

(g) Every Bond under this Paragraph 13.4.1 must display the Surety's Bond Number. A rider including the following provisions shall be attached to each Bond:

(i) Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents which, singularly or in the aggregate, does not exceed twenty percent (20%) of the Contract Sum. Except as to increases in the Contract Sum in excess of the percentage set forth above in this Clause, any other addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either the City or the Contractor to the other, shall not release the Surety of its obligations hereunder and notice to the Surety of such matters is hereby waived.

(ii) Surety further agrees that in event of any default by the City in the performance of the City's obligations to the Contractor under the Contract, the Contractor or Surety shall cause written notice of such default (specifying said default in detail) to be given to the City, and the City shall have thirty (30) days from time after receipt of such notice within which to cure such default, or such additional reasonable period of time as may be required if the nature of such default is such that it cannot be cured within thirty (30) days. Such Notice of Default shall be sent, by certified or registered U.S. Mail, return receipt requested, first class and postage prepaid, to the City.

(h) If the Surety on any Bond furnished by the Contractor is declared a bankrupt or becomes insolvent or its right to do business in Missouri is terminated, or it ceases to meet the requirements of this paragraph, the Contractor shall within ten (10) days substitute another Bond and Surety, both of which must be acceptable to the City.

13.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

13.4.3 The Contractor shall keep the surety informed of the progress of the Work, and, where necessary, obtain the surety's consent to, or waiver of: (1) notice of changes in the Work; (2) request for reduction or release of retention; (3) request for final payment; and (4) any other material required by the surety. The City shall be notified by the Contractor, in writing, of all communications with the surety. The City may, in the City's

sole discretion, inform surety of the progress of the Work and obtain consents as necessary to protect the City's rights, interest, privileges and benefits under and pursuant to any bond issued in connection with the Work.

ARTICLE 14 - UNCOVERING AND CORRECTION OF WORK

14.1 UNCOVERING OF WORK

14.1.1 If a portion of the Work is covered contrary to the City's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Design Professional, be uncovered for the Design Professional's observation and be replaced at the Contractor's expense without change in the Contract Time.

14.1.2 If a portion of the Work has been covered which the Design Professional has not specifically requested to observe prior to its being covered, the Design Professional may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the City. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the City or a separate contractor in which event the City shall be responsible for payment of such costs.

14.2 CORRECTION OF WORK

14.2.1 The Contractor shall promptly correct Work rejected by the Design Professional or failing to conform to the requirements of the Contract Documents, whether observed before or after final payment and whether or not fabricated, installed or completed. If Work has been rejected by the Design Professional the Design Professional shall have the discretion to require the Contractor to remove it from the Project site and replace it with Work that is not defective. The Contractor shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal, including, but not limited to, all costs of repair or replacement of work of others. The Contractor shall bear costs of correcting or removing such rejected Work, including, but not limited to, additional testing and inspections and compensation for the City's services and expenses made necessary thereby. If prior to the date of final payment, the Contractor, a Subcontractor or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the City.

14.2.2 If, within one (1) year after the date of final payment to the Contractor, or after the date for commencement of warranties, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the City to do so. This obligation under this Subparagraph shall survive acceptance of the Work under the Contract and termination of the Contract. The City shall give such notice promptly after discovery of the condition. The obligations under Paragraph 14.2 shall cover any repairs and replacement to any part of the Work or other property caused by the defective Work. Upon completion of any Work under or pursuant to this Paragraph 14.2, the one (1) year correction period in connection with the Work requiring correction shall be renewed and recommence.

14.2.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the City may correct it in accordance with Paragraph 3.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Design Professional, the City may remove it and store the savable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the City may, upon ten (10) additional days' written notice, sell such materials and equipment at auction or at sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the City's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the City.

14.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the City or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

14.2.5 Nothing contained in this Paragraph 14.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one (1) year as described in Subparagraph 14.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

ARTICLE 15 - TERMINATION OR SUSPENSION OF THE CONTRACT

15.1 TERMINATION BY THE CITY FOR CAUSE

15.1.1 The City may terminate the Contract if the Contractor:

- (a) refuses or fails to supply enough properly skilled workers, superintendents, foremen or managers or proper materials;
- (b) fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- (c) disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- (d) otherwise is guilty of substantial breach of a provision of the Contract Documents;
- (e) breaches any warranty or representations made by the Contractor under or pursuant to the Contract Documents;
- (f) fails to furnish the City with assurances satisfactory to the City evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents; or
- (g) fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than ten (10) days, except as permitted under the Contract Documents.

15.1.2 When any of the above reasons exist, the City may without prejudice to any other rights or remedies of the City and after giving the Contractor and the Contractor's surety, if any, seven (7) days' written notice, terminate this Contract, and may, subject to any prior rights of the surety:

- (a) take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- (b) accept assignment of subcontracts pursuant to Paragraph 6.4; and
- (c) finish the Work by whatever reasonable method the City may deem expedient.

15.1.3 When the City terminates the Contract for one of the reasons stated in Subparagraph 15.1.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

15.1.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the City's services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the City. The obligation of the Contractor or the City for payment of said amounts shall survive termination of the Contract.

15.2 SUSPENSION BY THE CITY FOR CONVENIENCE

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

15.3 CITY'S TERMINATION FOR CONVENIENCE

15.3.1 The City may, at any time, terminate the Contract in whole or in part for the City's convenience and without cause. Termination by the City under this Paragraph shall be by a notice of termination delivered to the Contractor specifying the extent of termination and the effective date.

15.3.2 Upon receipt of a notice of termination for convenience, the Contractor shall immediately, in accordance with instructions from the City, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this Paragraph:

- (a) cease operation as specified in the notice;
- (b) place no further orders and enter into no further subcontracts for materials, labor, services or facilities except as necessary to complete continued portions of the Contract;
- (c) terminate all subcontracts and orders to the extent they relate to the Work terminated;
- (d) proceed to complete the performance of Work not terminated; and
- (e) take actions that may be necessary, or that the City may direct, for the protection and preservation of the terminated Work.

15.3.3 Upon such termination, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the City's instructions and for all claims, costs, losses and damages incurred in settlement of terminated contracts with Subcontractors and suppliers. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits, consequential damages and other economic losses.

15.3.4 The City shall be credited for (1) payments previously made to the Contractor for the terminated portion of the Work, (2) claims which the City has against the Contractor under the Contract and (3) the value of the materials, supplies, equipment or other items that are to be disposed of by the Contractor that are part of the Contract Sum.

15.3.5 Upon determination by a court that termination of the Contractor or its successor in interest pursuant to Paragraph 15.1 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Paragraph 15.3, and the Contractor's sole and exclusive remedy for wrongful termination is limited to recovery of the payments permitted for termination for convenience as set forth in Paragraph 15.3.

ARTICLE 16 - MISCELLANEOUS PROVISIONS

16.1 GOVERNING LAW, CHOICE OF FORUM AND EXTENT OF AGREEMENT

16.1.1 This Contract shall be deemed to be a Missouri contract and shall be construed, enforced and regulated in accordance with the laws of the State of Missouri, U.S.A. In the event of any dispute or controversy between the parties, each agrees that the Circuit Court of Buchanan County, Missouri shall have exclusive jurisdiction to determine all issues arising between them. Provided, however, if a dispute arises out of or relates to this Contract, or the breach thereof, and if the dispute cannot be settled through negotiations, the parties agree to try in good faith to settle the dispute by non-binding mediation under the Construction Industry Mediation Rules of the American Arbitration Association as a condition precedent to filing any action with the Circuit Court of Buchanan County, Missouri. Such mediation shall be held in St. Joseph, Missouri.

16.1.2 The Contract Documents are the exclusive statement of the contract and agreements of the parties with respect to its subject matter and supersedes and replaces all prior agreements, discussions, representations, and proposals, whether written or oral, relating to the subject matter hereof. No amendment or Modification of this Contract shall be effective unless the same is in writing and signed by the parties.

Design Professional may observe such procedures. The City shall bear such costs except as provided in Subparagraph 16.5.3.

16.5.3 If such procedures for testing, inspection or approval under Subparagraphs 16.5.1 and 16.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the City's services and expenses. The Contractor also agrees that the cost of testing services required for the convenience of the Contractor in his scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work shall be borne by the Contractor.

16.5.4 Required certificates of testing, inspection or approval shall be secured by the Contractor and promptly delivered to the Design Professional.

16.5.5 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

16.5.6 The Contractor shall arrange for and pay for all costs of all testing required by the Contract Documents or any applicable Laws for materials to be tested or certified at or on the place or premises of the source of the material to be supplied. The City shall have the right to require testing of all materials at the place of the source of the material to be supplied if not required by the Contract Documents or any applicable Laws. The City shall bear the costs of such inspections not required by the Contract Documents or by applicable Laws. When any tests are made at the source of production, the producer shall furnish every reasonable facility for the performance of the tests and for the protection of testing equipment and supplies, and shall permit the inspector to have free access to all parts of the plant to enable adequate inspection and selection of samples. Sources of supply of bituminous material, where the Design Professional is required to conduct tests, shall have adequate testing facilities and satisfactory laboratory equipment, which equipment shall meet the requirements of the standard methods mentioned.

16.6 INTEREST

16.6.1 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate of one and one-half percent (1.5%) per month.

16.7 GENERAL PROVISIONS

16.7.1 Any federal or state governmental agency providing funding for the Project shall have the right to inspect and approve all Work, whether completed or in progress. The Contractor agrees to comply with all requirements required by such federal or state governmental agency in performing the Work.

16.7.2 Any specific requirement in this Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis, and are also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

16.7.3 All headings, titles and paragraph captions are inserted in this Contract for convenience of reference only, are descriptive only and shall not be deemed to add to or detract from or otherwise modify the meaning of the paragraphs.

16.7.4 This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same Contract.

16.7.5 The terms "hereof", "herein" and "hereunder" and words of similar import, shall be construed to refer to this Contract as a whole, and not to any particular paragraph, section or provision unless expressly so stated.

16.7.6 Waiver of any of the provisions of this Contract or of any breach of this Contract shall not thereafter be deemed to be a consent by the waiving party to any further waiver, modification or breach by the other party, whether new or continuing, of the same or any other covenant, condition or provision of this Contract.

16.7.7 If any of the provisions of this Contract shall be construed to be invalid or illegal, the legality or validity of any of the other provisions of this Contract shall not be affected thereby. To the contrary, the illegal or invalid provision of this Contract shall be severable and any other provisions shall remain in full force and effect.

16.7.8 The parties acknowledge and agree that time and exact performance are of the essence of this Contract.

16.7.9 Should the City be required to institute legal action to enforce any of its rights set forth in this Contract, then the City shall be entitled to reimbursement for all reasonable attorneys' fees and costs incurred as determined by the Court in any such action.

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