

**SPECIFICATIONS**  
**and**  
**RELATED DOCUMENTS**  
**for**  
**FY 2021-2022 (Rolla City Buehler Park Playground)**

**IN**  
**ROLLA, MISSOURI**  
**PROJECT NUMBER**  
**070-580-1**  
**FEBRUARY 2022**

**Prepared by**  
*City of Rolla*  
*Parks and Recreation Department*  
*901 N. Elm*  
*Rolla, Missouri*

## NOTICE TO BIDDERS

The City of Rolla hereby requests bids for the following project:

Bids will be accepted until Wednesday, Feb. 9, in the office of the City Clerk, 3<sup>rd</sup> Floor, 901 North Elm Street, Rolla, Missouri, at which time they will be opened. Bids shall be submitted in a sealed envelope and clearly marked **“BUEHLER PARK PLAYGROUND, PROJECT 070-580-1.”**

The project will consist of a complete new playground equipment structure with safety surface and installation. An itemized breakout of scope of work can be found in these specifications.

Contractor shall be responsible for compliance with Section 290.250 of the Revised Missouri Statutes pertaining to prevailing wages.

Only Missouri laborers and laborers from nonrestrictive states are allowed by law to be employed on Missouri's public works projects when the unemployment rate exceeds 5% for two consecutive months. (Sections 290.550 through 290.580 R.S.Mo.)

Bidders are informed that pursuant to Section 285.530, R.S.Mo, as a condition of the award of any contract in excess of five thousand dollars (\$5,000.00), the successful bidder shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection to the contracted services. Successful bidders shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection to the contracted services.

Bidders are informed that the project is subject to the requirements of Section 292.675, R.S.Mo, which requires all contractors or subcontractors doing work on the project to provide, and require its on-site employees to complete, a ten (10) hour course in construction safety and health approved by the Occupation Safety and Health Administration (“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. The training must be completed within sixty (60) days of the date work on the project commences. On-site employees found on the worksite without documentation of the required training shall have twenty (20) days to produce such documentation.

All bids shall include the proposal form provided and shall be accompanied by a bid bond issued by an acceptable surety company and payable to the order of the City of Rolla, for not less than five percent (5%) of the total amount of the bid.

The successful Contractor shall be expected to proceed as expeditiously as possible upon receipt of the NOTICE TO PROCEED and complete the project within the specified number of calendar days as noted on the Scope of Work page. The successful contractor will be required to have a City of Rolla business license.

Payment shall be based on actual measured quantities.

The City reserves the right to reject any and all bids.

Bid documents, and specifications may be reviewed in, or purchased for \$35.00 from the Rolla Parks and Recreation Department, 901 N. Elm, Rolla, Missouri 65401. Bid documents can be picked up Monday through Friday, 8:00 a.m. to 5:00 p.m.

Floyd Jernigan  
Parks and Recreation Director

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## **INSTRUCTIONS TO BIDDERS**

1. Bids must be submitted with the “Bidder’s Proposal” form. Bids must be submitted in a sealed envelope, properly identified with the project name and number. Attached to the Bid Proposal shall be any applicable information or specification sheets, properly filled out, for the items bid.
2. The Bid must be filed with the City Clerk prior to the announced bid opening date and time.
3. The City of Rolla reserves the right to accept or reject any and/or all bids.
4. It will be the City’s intent to accept low competent bid if it meets specifications and conditions as outlined throughout this document and noted below. Competent is further defined to include, beyond what is noted in the Scope of Work and Project Specifications, the terms and length of warranties offered.
5. Bidders are advised that the City of Rolla shall consider prior substandard goods or prior substandard service delivery or excessive distance to the City as a criterion for bid rejection.
6. Bids must specify projected children capacity of playground, projected maintenance costs of playground annually during its lifetime, projected lifetime of playground materials, and the warranty period of the playground materials.
7. Bids equal in cost and specifications may go to the local bidder if there is one (given they meet all other conditions).
8. All bids shall meet or exceed specifications.
9. Alternate bids may be considered, providing all specification differences are clearly indicated and contain justification statements. The City of Rolla shall be the sole judge as to the suitability of the service or equipment offered for the intended purpose from the alternate bid.
10. Any exceptions to these terms or conditions or deviations from written specifications shall be shown in writing and attached to the Bidder’s Proposal.
11. Bidders are cautioned to verify their proposal before submission as requests for amendments, withdrawals or proposals, if received by the City after the time specified for opening, will not be considered.
12. Bidders must be factory authorized dealers for the equipment, service and parts of the items they are bidding.

13. Local bidders shall be defined as bidders in Rolla and the area surrounding Rolla for a five-mile radius from the city limits.
14. Successful bidder will be required to have the appropriate City of Rolla business license.
15. All questions regarding plans or specifications must be directed to the Parks and Recreation Department no later than 72 hours prior to time for receipt for proposals. Addendums will be provided to all bidders.



## **INFORMATION FOR BIDDERS**

### **I. CONTRACT DOCUMENTS**

- A. Plans, Specifications, and other contract documents, pursuant to which work is to be done, may be obtained at the office of the Parks and Recreation Director.
- B. The number of sets obtainable by any one party may be limited in accordance with available supply.

### **II. BIDDER'S OBLIGATION**

- A. Before submitting proposals each bidder shall carefully examine drawings, specifications, and related contract documents, visit site of work and fully inform himself as to all existing conditions, facilities, restrictions, and other matters which can affect the work or the cost thereof.
- B. Each bidder shall include in his proposal the cost of all work and materials required to complete the contract in as hereinafter specified.
- C. Failure or omission of any bidder to receive or examine any form, instrument, addendum, or other document, or to visit site and acquaint himself with existing conditions, shall in no way relieve him from any obligation with respect to his proposal or contract, and no extra compensation will be allowed by reason of anything or matter concerning which bidder should have fully informed himself prior to bidding.
- D. Submission of proposals shall be deemed acceptance of the above obligations and each and every obligation required to be performed by all of the contract documents in the event the proposal is accepted.

### **III. DOCUMENT INTERPRETATION**

- A. If any prospective bidder is in doubt as to the true meaning of any part of the specifications, drawings, or contract documents, he must submit a written request to the Parks and Recreation Director for an interpretation.
- B. Requests for such interpretations must be delivered to the Parks and Recreation Director at least 72 hours prior to time for receipt of proposals.
- C. Proposals are to be based only on interpretations as issued in form of addenda mailed only to each person who is on the Parks and Recreation Director's record as receiving a set of the Contract Documents.

### **IV. PROPOSALS**

- A. Proposals will be received for the construction of **"FY2021-22 – BUEHLER PARK PLAYGROUND, PROJECT 070-580-1."**

- B. All work is to be done as defined in specifications.
- C. Proposals are to be presented in sealed envelopes which are to be plainly marked: **“FY2021-22 – BUEHLER PARK PLAYGROUND, PROJECT 070-580-1”** and mailed or delivered to the place specified in the Advertisement for Bids. Bidders shall be responsible for actual delivery of proposals during business hours, and it shall not be sufficient to show that a proposal was mailed in time to be received before scheduled closing time for receipt of proposal.
- D. Bidder’s proposal shall include all city, state and federal sales, excise and similar taxes which may be lawfully assessed and all permits, governmental fees and licenses in connection with his performance of work and purchase of materials to be incorporated in the work.
- E. No bidder shall stipulate in his proposal any conditions not contained in the proposal form.
- F. The Owner reserves the right to waive informalities in proposals and to reject any or all proposals.

V. **MODIFICATION AND WITHDRAWAL OF BIDS**

- A. Bidder may withdraw his proposal at any time prior to the scheduled closing time for receipt of proposals, but no bidder may withdraw his proposal for the period of time specified in the Form of Proposal after scheduled closing time for receipt of bids.
- B. In the event any proposal is withdrawn after the scheduled closing time for receipt of proposals or bidder fails or refuses to execute contracts in accordance with a proposal acceptable to the City, or any other proposals submitted by such bidder may be considered by the City to have been withdrawn by such action on the part of the bidder.
- C. Only telegrams, letters, and other written requests for modifications or corrections of previously submitted proposals, which are addressed in the same manner as proposals and are received by the City Clerk prior to scheduled closing time for receipt of proposals, will be accepted and proposal corrected in accordance with such written requests with the following provisions:
  - 1. Provided that any such written request is contained in a sealed envelope which is plainly marked: **“FY 2021-22 – BUEHLER PARK PLAYGROUND, PROJECT 070-580-1.”**
  - 2. That in case of telegraphic modification the City is satisfied that written confirmation of such telegraphic modification over the signature of bidder was mailed prior to closing time. If such written confirmation is not received within two days from date of closing time, no consideration shall be given to telegraphic modifications.

## **VI. SIGNING OF PROPOSALS**

- A. Proposals which are signed for a partnership shall be signed in the firm name by all partners, or in the firm name by Attorney-in-fact. If signed by Attorney-in-fact, there should be attached to the proposal a Power of Attorney-in-fact evidencing authority to sign the proposal, dated the same date as the proposal and executed by all partners of the firm.
- B. Proposals which are signed for a corporation shall have the correct corporate name thereon and the signature of the president, attested by the Secretary and bear the corporate seal of the corporation.
- C. Proposals which are signed by an individual doing business under a firm name shall be signed in the name of the individual doing business under the proper firm name and style.

## **VII. AWARD OF CONTRACT**

- A. Subject to rights reserved, all work to be performed under these specifications will be awarded to one Contractor unless specifically modified under special conditions.
- B. The City reserves the right to let other contracts in connection with the work.
- C. In awarding the contract, the city may take into consideration the ability to promptly handle the additional work, skill, facilities, capacity, experience, ability, responsibility, previous work and financial standing of bidder, quality, efficiency and construction of equipment proposed to be furnished, period of time within which equipment is proposed to be furnished and delivered, and necessity of prompt and efficient completion of work herein described. Inability of any bidder to meet the requirements mentioned above may be cause for rejection of his proposal.

## **VIII. CONTRACT SECURITY**

- A. Each Bid must be accompanied by a bid bond payable to the owner for five percent (5%) of the total amount of the bid. As soon as the bid prices have been compared, the owner will return the bonds of all except the three lowest responsible bidders. When the agreement is executed the bonds of the two remaining unsuccessful bidders will be returned. The bid bond of the successful bidder will be retained until the payment bond and performance bond have been executed and approved, after which it will be returned. Only a bid bond issued to an acceptable surety company will be accepted with each bid.
- B. Contractor shall furnish a performance bond in an amount at least equal to 100 percent (100%) of the contract price as security for the faithful performance of his contract and for the payment of all persons performing labor on the project and furnishing materials in connection therewith under his contract as set forth in the standard form of performance bond. The surety on such bond shall be a duly authorized surety company satisfactory to the City.

- C. Contractor shall furnish at no cost to the City, no later than the time at which the executed contract and bond are returned, a properly certified copy of the current Certificate of Authority to transact business in the State of Missouri of the surety company executing the required performance bond, such certificate to remain on file with the City Clerk. No performance bond will be approved by the City until such a certificate is furnished unless there is on file with the City Clerk such a current certificate, in which event no additional certificate will be required during the period of time for which the current certificate is in effect.
- D. If at any time the City, for justifiable cause, shall be or become dissatisfied with any surety or sureties then upon the performance bond, the Contractor shall within five days after notice from the City to do so, substitute an acceptable bond signed by such other surety or sureties as may be satisfactory to the City.

**IX. NOTICE TO PROCEED**

- A. Bidders must agree to commence work on a date to be specified in a written “Notice to Proceed” from the Parks and Recreation Director. A separate Notice to Proceed will be issued for the specified number of calendar days on the Scope of Work Page No. 22. The calendar day count will begin on the Notice to Proceed. Should the contractor fail to complete the work on or before the completion date specified the contractor will be charged liquidated damages in the amount of **\$100.00** per calendar day for each full calendar day that the work is not fully completed. Liquidated damages will not be charged for weekends and holidays.

**X. NUMBER OF CONSTRUCTION DOCUMENTS**

- A. The City will furnish the Contractor a copy of the executed contract.
- B. The City will furnish the Contractor, free of charge, the number of complete sets of plans and specifications for the work and all applicable subdivisions thereof.

PROPOSAL FOR CONSTRUCTION OF  
**FY 2021-22 – BUEHLER PARK PLAYGROUND  
PROJECT 070-580-1**

FOR  
ROLLA, MISSOURI

Proposal Submitted by: \_\_\_\_\_

*To the City Council, City of Rolla, Missouri:*

- I. This proposal is submitted for the Project entitled “**FY 2021-22 – BUEHLER PARK PLAYGROUND, PROJECT 070-580-1.**”
- II. The Contract Documents for these improvements are those prepared by the Parks and Recreation Department, City of Rolla, Missouri.
- III. In submitting this proposal, the undersigned declares that the only persons or parties interested in the proposal as principals are those named herein; and that the proposal is made without collusion with any other person, firm, or corporation.
- IV. A bid bond issued by an acceptable surety company and payable to the order of the City of Rolla, for not less than five percent (5%) of the total amount of the bid, is attached to this bid proposal.
- V. The undersigned further declares that he has carefully examined the proposal, plans and Specifications, and that he has familiarized himself with all of the local conditions affecting the contract and the detailed requirements of construction, and understands that in making this Proposal he waives all right to plead any misunderstanding regarding the same.
- VI. The undersigned has by investigation of the site of the work and otherwise satisfied himself as to the nature and location of the work and has fully informed himself as to all conditions and matters that can in any way affect the work or the cost thereof.
- VII. The undersigned further understands and agrees that if this Proposal is accepted he is to furnish and provide all necessary machinery, tools, apparatus and other means of construction, and to do all of the work and to furnish all of the materials specified in the contract, except such materials and/or work to be furnished by the City, in the manner and at the time therein prescribed, and in accordance with the requirements therein set forth.

VIII. The undersigned will execute the agreement and furnish the required performance and Payment Bonds and proof of insurance coverage within fourteen (14) days after notice to him of acceptance of his bid by the City; and further, that this bid may not be withdrawn for a period of sixty (60) days after the date set for the opening thereof. If any bidder shall withdraw his bid within said period, the Contractor shall be liable under the provisions of the Bid Security, or the Contractor and his surety shall be liable under the Bid Bond as the case may be.

## CONTRACT AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_\_ Day of \_\_\_\_\_ by and between the City of Rolla, Missouri, Party of the First Part and hereinafter called Owner, and \_\_\_\_\_ Party of the second Part and hereinafter called the Contractor.

WITNESSETH:

THAT WHEREAS, the Owner has caused to be prepared, in accordance with law, specifications, plans, and other Contract Documents for the work herein described, and has approved and adopted said documents, and has caused to be published and advertised for and in connection with the construction of “**FY 2021-22 – BUEHLER PARK PLAYGROUND, PROJECT 070-580-1**”, in complete accord with the Contract Documents and the said plans and specifications; and

WHEREAS, the said Contractor, in response to such advertisement, has submitted to the Owner, in the manner and at the time specified, a sealed proposal in accordance with the terms of said advertisement; and

WHEREAS, the Owner, in the manner prescribed by law, has publicly opened, examined and canvassed the proposals submitted in response to the published invitation therefore, and as a result of such canvass has determined and declared the aforesaid Contractor to be lowest and best bidder for the said work and has duly awarded to the said Contractor a contract therefore, for the sum or sums named in the Contractor’s proposal, a copy thereof being attached to and made a part of this contract.

NOW THEREFORE, in consideration of the compensation to be paid to the Contractor and of the mutual agreement herein contained, the parties to these presents have agreed and hereby agree, the Owner for itself and its successors, and the Contractor for itself, himself, or themselves, or its, his or their successors and assigns, or its, his, or their executors and administrators, as follows:

ARTICLE I. That the Contractor shall (a) furnish all tools, equipment, supplies, superintendent, transportation, and other construction accessories, services and facilities; (b) furnish all materials, supplies, and equipment specified and required to be incorporated in, and form a permanent part of the completed work except the items specified to be furnished by the Owner; (c) provide and perform all necessary labor, and (d) in a good, substantial, and workmanlike manner, and in accordance with the provisions of the General Conditions and the Special Conditions of the Contract, which are attached hereto and made a part hereof, and in conformity with the Contract Plans and Specifications designated and identified therein, execute, construct, and complete all work included in, and covered by the Owner’s official award of this Contract to the said Contractor, such award being based on the acceptance by the Owner of the Contractor’s proposal, for the construction of “**FY 2021-22 – BUEHLER PARK PLAYGROUND, PROJECT 070-580-1**”.

It is further stipulated that not less than the prevailing hourly rate of wages, as set out in the wage order attached to, and made part of the specification for work under the contract, as found by the Department of Labor and Industrial Relations of the State of Missouri, or determined by the Court of Appeal, shall be paid to all workers performing work under this Contract. Further, the contractor will forfeit a penalty to the contracting public body of \$100 per day (or portion of a day) for each worker that is paid less than the prevailing rate for any work done under the contract by the contractor or by any subcontractor.”

ARTICLE II. Contractor acknowledges that Section 285.530, R.S.Mo, prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the State of Missouri. Contractor therefore covenants that it is not knowingly in violation of Subsection 1 of Section 285.530, R.S.Mo, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work on the Project, and that its employees are lawfully eligible to work in the United States.

ARTICLE III. Occupational Safety and Health Administration (OSHA)

Safety Training:

Contractor must require and shall provide a ten (10) hour Occupational Safety and Health Administration (OSHA) construction safety program for all employees who will be on-site at the project. The construction safety program shall include a course in construction safety and health that is 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 Section 292.675, R.S.Mo., unless they have previously completed the program and have documentation of having done so, which will be provided to the city.

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

Notice of Penalties for Failure to Provide Safety Training

Pursuant to Section 292.675, R.S.Mo, Contractor shall forfeit to City as a penalty two thousand five hundred dollars (\$2,500.00), plus one hundred dollars (\$100.00) for each on-site employee employed by Contractor or its Subcontractor, for each calendar day, or portion thereof, such on-site employee is employed without the construction safety training required in Safety Training section of Article III above.

The penalty described in above subsection A of this section shall not begin to accrue until the time periods described in Sections B and C Safety Training of Article III above have elapsed.

Violations of Article III – Safety Training above and imposition of the penalty described in this Section shall be investigated and determined by the Missouri Department of Labor and Industrial Relations.

ARTICLE IV. Any wage subsidy, bid supplement or rebate that is provided must be reported to the City within 30 days of receipt of payment, in accordance with Section 290.095, RSMo.



ARTICLE V. That the Contractor shall construct and complete the work designated and described in the foregoing proposal and attached specifications in accordance with the Notice to Bidders, Instruction to Bidders, Proposal, Bond, General Conditions, Special Conditions, Technical Specifications, Drawings, Addenda, and other component parts of the Contract Documents hereto attached, all of which documents from the Contract and are as fully a part hereto as if repeated verbatim herein.

ARTICLE V. That the Owner shall pay to the Contractor for the performance of the work described as follows: Complete construction of the improvements in accordance with plans and specifications; and the Contractor will accept as full compensation therefore, the sum (subject to adjustment as provided by the Contract) of \_\_\_\_\_ for all work covered by and included in the contract award and designated in the foregoing Article I. Payment therefore shall be made in the manner provided in the General Conditions attached hereto.

ARTICLE VI. That the Contractor shall begin assembly of materials and equipment within ten (10) days after receipt from the Owner of executed copies of the Contract, and that the Contractor shall complete said work within the specified consecutive calendar days as noted in the Scope of Work Page No. 22. A Notice to Proceed will be issued as soon as they are made available to the City.

It is further stipulated that in the event that the Contractor fails in the performance of the work specified and required to be performed within the period of time specified, the Contractor shall pay the Owner, as and for liquidated damages, and not as a penalty, the sum of one hundred dollars (\$100.00) per calendar day that the Contractor shall be in default.

ARTICLE VII. Before the final payment can be made to the Contractor on the project, the Contractor must complete a return the Affidavit Compliance with the Prevailing Wage Law form furnished at the end of the Special Conditions sections.

ARTICLE VIII. Before the final payment can be made on the project to the Contractor, the Contractor must complete and return the Contractor's Affidavit Regarding Settlement of Claims form furnished at the end of the Special Conditions section.

ARTICLE IX. This Contract will not be binding and effective until confirmed by the Owner.

IN WITNESS-WHEREOF: The parties have executed this Contract as of the day and year first above written.

CITY OF ROLLA, MISSOURI

CONTRACTOR

BY \_\_\_\_\_  
Mayor, Owner, Party of the First Part

BY \_\_\_\_\_

TITLE \_\_\_\_\_

STATE OF MISSOURI     )  
  ) SS  
County of Phelps         )

On this \_\_\_\_\_ day of \_\_\_\_\_ before me appeared \_\_\_\_\_ ,  
to me personally known, who, being by me duly sworn, did say that he is the Mayor of the City  
of Rolla, Missouri, a municipal corporation, and the seal affixed to said instrument is the  
corporate seal of said municipal corporation and that said instrument is the corporate seal of said  
municipal corporation and that said instrument was signed under authority of the City Council of  
of the City of Rolla, Missouri; and the said \_\_\_\_\_ acknowledged  
said instrument to be the free act and deed of said municipal corporation.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

STATE OF MISSOURI     )  
  ) SS  
County of Phelps         )

On this \_\_\_\_\_ day of \_\_\_\_\_ before me appeared \_\_\_\_\_ ,  
to me personally known, who, being by me duly sworn, did say that (s)he is the \_\_\_\_\_  
of \_\_\_\_\_  
and that the seal affixed to said instrument is the corporate seal of said corporation by authority  
of its board of directors; and the said \_\_\_\_\_ acknowledged said  
instrument to be the free act and deed of said corporation.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EVERY TRANSIENT EMPLOYER**, as defined in Section 285.230, RSMo, enclosed in the laws section, must post in a prominent and easily accessible place at the work site a clearly legible copy of the following: (1) The notice of registration for employer withholding issued to such transient employer by the director of revenue; (2) Proof of coverage for workers' compensation insurance or self-insurance signed by the transient employer and verified by the department of revenue through the records of the division of workers' compensation; and (3) The notice of registration for unemployment insurance issued to such transient employer by the division of employment security. Any transient employer failing to comply with these requirements shall, under Section 285.234, RSMo, enclosed in the laws section, be liable for a penalty of five hundred dollars per day until the notices required by this section are posted as required by that statute.

**PROOF OF LAWFUL PRESENCE - § 208.009**

1. This Missouri Statute prohibits any illegal alien from receiving state or local “public benefits,” and
2. The Statute requires all applicants at the time of application for such public benefits to provide “**affirmative proof** that the applicant is a citizen or a permanent resident of the United State or is lawfully present in the United States.”

**Affidavit of Work Authorization and Documentation**

Effective January 1, 2009 and pursuant to 285.530 R.S.Mo, for all agreements in excess of \$5,000.00, the bidder must affirm its enrollment and participation in a federal work authorization program with respect to the employees proposed to work in connection with the services requested herein by

- submitting a completed, notarized copy of “**AFFIDAVIT OF COMPLIANCE WITH SECTION 285.500 R.S.MO., ET SEQ. FOR ALL AGREEMENTS IN EXCESS OF \$5,000.00**” and
- providing documentation affirming the bidder’s enrollment and participation in a federal work authorization program (see below) with respect to the employees proposed to work in connection with the services requested herein.

The City of Rolla encourages companies that are not already enrolled and participating in a federal work authorization program to do so.

E-Verify is an example of a federal work authorization program. Acceptable enrollment and participation documentation consists of the following two pages of the E-Verify Memorandum of Understanding (MOU): 1) a valid, completed copy of the first page identifying the bidder and 2) a valid copy of the signature page completed and signed by the bidder, the Social Security Administration, and the Department of Homeland Security - Verification Division.

Information regarding E-verify is available at

[http://www.dhs.gov/xprevprot/programs/gc\\_1185221678150.shtm](http://www.dhs.gov/xprevprot/programs/gc_1185221678150.shtm). or by calling 888-464-4218.

**AFFIDAVIT OF COMPLIANCE**  
**SECTION 285.530.2**

State of Missouri                    )  
  ) ss  
County of \_\_\_\_\_            )

Now this \_\_\_\_ day of \_\_\_\_\_, 2019, the undersigned, being first duly sworn, deposes and says:

1. I am more than 18 years of age.
2. I make this affidavit from my personal knowledge of the facts stated herein or upon information and facts available to me as a duly authorized owner, partner, corporate or LLC officer or Human Relations Director of \_\_\_\_\_  
(Name of Corporation, LLC, sole proprietorship or partnership)
3. I am authorized to make this affidavit on behalf of \_\_\_\_\_.  
(name of business entity, same as above)
4. I state and affirm that \_\_\_\_\_ is enrolled and is currently  
(Name of business entity, same as above)  
participating in E-Verify, a federal work authorization program or another equivalent electronic verification of work authorization program operated by the United States Department of Homeland Security under the Immigration Reform and Control Act of 1986.
5. Further, \_\_\_\_\_ does not knowingly employ any person who is  
(name of business entity, same as above)  
an unauthorized alien.
6. Further, \_\_\_\_\_ has performed an electronic verification check  
(name of business entity, same as above)  
as described above on all workers hired since January 1, 2009 or obtained documents required for completion of a federal I-9 form before it began participating in e-verify.
7. Attached to this affidavit is a true and accurate copy of this company's Memorandum of Understanding with the United States concerning the use of e-verify.

I certify under penalty of perjury that the statements above are complete, true and accurate to the best of my knowledge and belief.

\_\_\_\_\_  
(Authorized Agent, Partner, Owner or Officer)

*If business has a Human Relations Director or equivalent that person must sign as an affiant as well.*

**I certify under penalty of perjury that the statements above are complete, true and accurate to the best of my knowledge and belief.**

\_\_\_\_\_  
Human Relations Director

*This form is promulgated pursuant to 15CSR 60-15.020. Use of this form is not required but the Attorney General has deemed this affidavit sufficient in form to satisfy the requirements of section 285.540, RSMo., Supp. 2008.*

**FURTHER THE AFFIANT SAYETH**

\_\_\_\_\_  
(Signature)

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year 2019, before me, \_\_\_\_\_ a Notary Public in and for said State, personally appeared \_\_\_\_\_, known to me to be the person who executed the within affidavit, and acknowledged to me that he/she executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the county and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

My Commission Expires:

**FY 2021-22 – BUEHLER PARK PLAYGROUND  
PROJECT 070-580-1  
CITY OF ROLLA, MISSOURI**

**SCOPE OF WORK AND PROJECT SPECS**

Bid price includes all labor, materials, forms and equipment necessary for constructing all improvements as shown on the plans and specifications. The final price not to exceed \$115,000.

The proposal to include the following:

- > Age group up to 12 years
- > Minimum ASTM use zone 50' x 50'
- > Capacity minimum 50 kids
- > Maximum fall height 8'
- > 5" diameter posts.
- > Dinosaur theme
- > Activities minimum 15
  - 4 slides
  - 4 climbers
  - 7 additional activities
  - No rope activities
- > Shade canopy or canopies incorporated into the playground
- > Bidder may provide up to 3 playground options
- > Poured in Place safety surface
- > Sub-base options are concrete or compacted stone. Please be prepared to give your reasons for your choice.
- > Provide complete pricing for the total project (playground, safety surface, concrete, installation)
- > Lifetime warranty on posts, clamps, caps and hardware. Minimum 15-year warranty of playscapes and any molded components. Minimum 10-year warranty on shade fabric, fiberglass signage and any wood products used. Minimum 5-year warranty on swing seats, HDPE panels, and nylon-covered nets and components. Minimum 1-year warranty on any coil springs and any other products or moving parts not covered in the above. Minimum 3-year warranty on safety surface.
- > Installation by certified commercial installer
- > Play structure to meet ADA standards for accessibility
- > All playground equipment shall comply will all the requirements of CPSC, ASTM, ADA and will be IPEMA certified.
- > All safety fall zones shall be determined in accordance with ASTM 1487-07 and CPSC Handbook for Public Playground Safety Publication number 325.
- > All playground equipment designs shall be evaluated and signed off by a NPSI certified playground inspector.

- > The manufacturer of the playground equipment must carry a minimum of \$5 million of liability insurance per piece of play per child for the life of the equipment, with an AM best rating.
- > The manufacturer of the playground equipment must have a minimum of 10 years experience in manufacturing commercial playground equipment.
- > Bidder must comply with ASTM F1487-17 Standard consumer performance specification for playground equipment for public use.
- > Bidder must comply with ASTM F2223-15 Standard guide for ASTM standards on playground surfacing
- > Bidder must comply with CPSC Handbook for Public Playground Safety.
- > All manufactured components must be IPEMA certified (International Playground Equipment Manufacturers Association).
- > Maximum of 3 design bids per bidder

**TIMETABLE FOR COMPLETION:** 90 days once begun, to be finished prior to Sept. 30, 2022. 90 days may be extended if Parks Director determines valid reason to do so.

## **GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION**

### **ARTICLE 1 CONTRACT DOCUMENTS**

#### **1.1 DEFINITION**

##### **1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents consist of the City of Rolla-Contractor Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), the Drawings, the Specifications, and all Addenda issued prior to and all Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a written interpretation issued by the Parks and Recreation Director pursuant to Subparagraph 2.2.8, or (4) a written order for a minor change in the Work issued by the Parks and Recreation Director pursuant to Paragraph 12.4. The Contract Documents do not include Bidding Documents such as the Advertisement or Invitation to Bid, the Instructions to Bidders, sample forms, the Contractor's Bid or portions of Addenda relating to any of these, or any other documents, unless specifically enumerated in the City of Rolla-Contractor Agreement.

##### **1.1.2 THE CONTRACT**

The Contract Documents form the Contract for Construction. This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification as defined in Subparagraph 1.1.1.

##### **1.1.3 THE WORK**

The Work comprises the completed construction required by the Contract Documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

#### **1.1.4 THE PROJECT**

The Project is the total construction of the Work performed under the Contract. Documents may be the whole or a part.

### **1.2 EXECUTION, CORRELATION AND INTENT**

1.2.1 The Contract Documents shall be signed in not less than triplicate by the City of Rolla and Contractor. If either the City or the Contractor or both do not sign the Conditions of the Contract, Drawings, Specifications, or any of the other Contract Documents, the Parks and Recreation Director shall identify such Documents.

1.2.2 By executing the Contract Documents the Contractor represents that he has visited the site, familiarized himself with the local conditions under which the work is to be performed, and correlated his observations with the requirements of the Contract Documents.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.4 The organization of the Specifications into divisions, sections and articles, and the 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.

### **1.3 OWNERSHIP AND USE OF DOCUMENTS**

1.3.1 All Drawings, Specifications and copies thereof furnished by the Parks and Recreation Director are and shall remain the property of the City. They are to be used with respect to this Project and are not to be used on any other project. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the City's common law copyright or other reserved rights.

## **ARTICLE 2 PARKS AND RECREATION DIRECTOR**

### **2.1 DEFINITION**



2.1.1 The term Parks and Recreation Director means the Parks and Recreation Director or his authorized representative.

## **2.2 ADMINISTRATION OF THE CONTRACT**

2.2.1 The Parks and Recreation Director will provide administration of the Contract as hereinafter described.

2.2.2 The Parks and Recreation Director will be the City's representative during construction and until final payment is due. The Parks and Recreation Director will advise and consult with appropriate City representatives. The City's instructions to the Contractor shall be forwarded through the Parks and Recreation Director. The Parks and Recreation Director will have authority to act on behalf of the city only to the extent provided in the Contract Documents.

2.2.3 The Parks and Recreation Director or his designee(s) will visit the site at intervals appropriate to the stage of construction to monitor the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents. The Parks and Recreation Director will make on-site inspections to check the quality or quantity of the Work. On the basis of his on-site observations he will endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor.

2.2.4 The Parks and Recreation Director will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and he will not be responsible for the Contractor's failure to carry out the work in accordance with the Contract Documents. The Parks and Recreation Director will not be responsible for or have control or charge over the acts or omissions of the Contractor, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

2.2.5 The Parks and Recreation Director and his designee(s) shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so the Parks and Recreation Director may perform his functions under the Contract Documents.

2.2.6 Based on the Parks and Recreation Director's observations and an evaluation of the Contractor's Applications for Payment, the Parks and Recreation Director will determine the amounts owed to the Contractor and will issue Certificates for Payment in such amounts, as provided in paragraph 9.4.

2.2.7 The Parks and Recreation Director will be the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by both the City and Contractor.

2.2.8 The Parks and Recreation Director will render interpretations necessary for the proper execution or progress of the Work, with reasonable promptness and in accordance with any time limit agreed upon. Either party to the Contract may make written request to the Parks and Recreation Director for such interpretations.

2.2.9 Claims, disputes and other matters in question between the Contractor and the City relating to the execution or progress of the Work or the interpretation of the Contract Documents shall be referred initially to the Parks and Recreation Director for decision which he will render in writing within a reasonable time.

2.2.10 All interpretations and decisions of the Parks and Recreation Director shall be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. In his capacity as interpreter and judge, he will endeavor to secure faithful performance by both the City and the Contractor, will not show partiality to either, and will not be liable for the result of any interpretation or decision rendered in good faith in such capacity.

2.2.11 The Parks and Recreation Director's decisions in matters relating to artistic effect will be final if consistent with the intent of the Contract Documents.

2.2.12 Any claim, dispute or other matter in question between the Contractor and the City referred to the Parks and Recreation Director, except those relating to artistic effect as provided in Subparagraph 2.2.11 and except those which have been waived by the making or acceptance of final payment as provided in Subparagraphs 9.9.4 and 9.9.5, shall be subject to arbitration upon the written demand of either party. However, no demand for arbitration of any such claim, dispute or other matter may be made until the earlier of (1) the date on which the Parks and Recreation Director has rendered a written decision, or (2) the tenth day after the parties have presented their evidence to the Parks and Recreation Director or have been given a reasonable opportunity to do so, if the Parks and Recreation Director has not rendered his written decision by that date. When such a written decision of the Parks and Recreation Director states (1) that the decision is final but subject to appeal, and (2) that any demand for arbitration of a claim, dispute or other matter covered by such decision must be made within thirty (30) days after the date on which the party making the demand receives the written decision, failure to demand arbitration within said thirty (30) day period will result in the Parks and Recreation Director's decision becoming final and binding upon the Parks and Recreation Director and the Contractor. If the Parks and Recreation Director renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence but will not supersede any arbitration proceedings unless the decision is acceptable to all parties concerned.

2.2.13 The Parks and Recreation Director will have authority to reject Work which does not conform to the Contract Documents. Whenever, in his opinion, he considers it necessary or advisable for the implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the Work in accordance with Subparagraph 7.7.2 whether or not such work be then fabricated, installed or completed. However, neither the Parks and Recreation Director's authority to act under this Subparagraph 2.2.13, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Parks and Recreation Director to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

2.2.14 The Parks and Recreation Director will review and approve or take other appropriate action upon Contractor's submittal such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and with the information given in the

Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Parks and Recreation Director's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.2.15 The Parks and Recreation Director will prepare Change Orders in accordance with Article 12, and will have authority to order minor changes in the Work as provided in Subparagraph 12.4.1.

2.2.16 The Parks and Recreation Director will conduct inspections to determine the dates of substantial completion and final completion, will receive and forward to the City for the City's review 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 Paragraph 9.9.

2.2.17 The Parks and Recreation Director will provide one or more Project Representatives to assist the Parks and Recreation Director in carrying out his responsibilities at the site. The duties, responsibilities and limitations of authority of any such Project Representative shall be as set forth in an exhibit to be incorporated in the Contract Documents.

### **ARTICLE 3 CITY**

#### **3.1 DEFINITION**

3.1.1. The City is the entity identified as such in the City of Rolla – Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term City means the City of Rolla or its authorized representative.

#### **3.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

3.2.1 The City shall, at the request of the Contractor, at the time of execution of the City of Rolla – Contractor Agreement, furnish to the Contractor reasonable evidence that he had made financial arrangements to fulfill his obligation under the Contract. Unless such reasonable evidence is furnished, the Contractor is not required to execute the City of Rolla Contractor Agreement or to commence the Work.

3.2.2 The City shall furnish all surveys describing the physical characteristics, legal limitations, utility locations, right-of-ways and easement for the site of the Project.

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

3.2.4 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, all copies of Drawings and Specifications reasonably necessary for the execution of the Work.

3.2.5 The City shall forward all instructions to the Contractor through the City Parks and Recreation Director.

3.2.6 The foregoing is in addition to other duties and responsibilities of the City enumerated herein and especially those in respect to Work by City or by Separate Contractors, Payments and Completion, and Insurance in Articles 6, 9 and 11 respectively.

### **3.3 CITY'S RIGHT TO STOP THE WORK**

3.3.1 If the Contractor fails to correct defective Work as required by Paragraph 13.2 or persistently fails to carry out the Work in accordance with the Contract Documents, the City by a written order signed personally by the Mayor and Parks and Recreation Director, may order the Contractor to stop the Work, or any portion thereof, until the cause of such order has been eliminated; however, this right of the City to stop the Work shall not give rise to any duty on the part of the City to exercise this right for the benefit to the extent required by Subparagraph 6.1.3.

### **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 seven days 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, after seven days following receipt by the Contractor of an additional written notice and without prejudice to any other remedy he may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies including compensation for the Parks and Recreation Director's office additional services made necessary by such default, neglect or failure. Such action by the City and the amount charged to the Contractor are both subject to the prior approval of the Parks and Recreation Director. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the City.

## **ARTICLE 4 CONTRACTOR**

### **4.1 DEFINITION**

4.1.1 The Contractor is the person or entity identified as such in the City of Rolla-Contractor agreement and is referred to throughout the contract Documents as if singular in number and masculine in gender. The term Contractor means the Contractor or his authorized representative.

### **4.2 REVIEW OF CONTRACT DOCUMENTS**

4.2.1 The Contractor shall carefully study and compare the Contract Documents and shall At once report to the Parks and Recreation Director any error, inconsistency or omission he may discover. The Contractor shall not be liable to the City or the Parks and Recreation Director for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents. The Contractor shall perform no portion of the Work at any time without Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such portion of the work.

### **4.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

4.3.1 Once all the required paperwork is submitted and the necessary city approvals have been made, the contractor shall attend a pre-construction meeting with the city and submit a suggested timetable. If satisfactory to the city, the city will issue a notice to proceed.

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

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

4.3.4 The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents. Either by the activities or duties of the Parks and Recreation Director in his administration of the contract, or by inspections, tests or approvals required or performed under Paragraph 7.7 by persons other than the Contractor.

#### **4.4 BEFORE FINAL PAYMENT-REQUIRED FINAL FORMS COMPLETION**

4.4.1. Before final payment can be made, the general contractor and all subcontractors must file an "**Affidavit of Compliance**" form PW-4 (Enclosed in Special Conditions Section) with Parks and Recreation. The affidavit must state the contractor has fully complied with the Missouri Prevailing Wage Law, and Parks and Recreation must verify the correct wages were paid. No payment can be legally made by Parks and Recreation to the Contractor until the affidavit is filed in proper form and order with Public Works (See Sections 290.290 and 290.325, RSMo).

4.4.2. **Contractor's Affidavit regarding Settlement of Claims** must be completed by the Contractor and returned to Parks and Recreation before final payment can be made to the Contractor. This form can be found at the end of Special Conditions in these specifications.

#### **4.5 LABOR AND MATERIALS**

4.5.1 Unless otherwise provided in the Contract Documents, the contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

4.5.2 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him.

#### **4.6 WARRANTY**

4.6.1 The Contractor warrants to the City and the Parks and Recreation Director that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these

requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Parks and Recreation Director, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Paragraph 13.2.

#### **4.7 TAXES**

**4.7.1 MISSOURI STATE STATUES 144.062, EFFECTIVE AUGUST 28, 1994, ALLOWS FOR A SALES TAX EXEMPTION TO CONTRACTORS CONSTRUCTING, REPAIRING OR REMODELING FACILITIES OR PURCHASING PERSONAL PROPERTY AND MATERIALS TO BE INCORPORATED INTO AND CONSUMED IN THE CONSTRUCTION OF PROJECTS FOR A TAX EXEMPTION ENTITY. THE TAX ENTITY SHALL FURNISH A SIGNED EXEMPTION CERTIFICATE AUTHORIZING SUCH PURCHASES FOR THE CONSTRUCTION, REPAIR OR REMODELING PROJECT TO EACH CONTRACTOR AND/OR SUBCONTRACTOR. FOR FURTHER INFORMATION PLEASE CONTACT THE DEPARTMENT OF PARKS AND RECREATION, TELEPHONE (573) 341-2386. A FORM APPROVED BY THE DEPARTMENT WILL BE PROVIDED UPON REQUEST.**

#### **4.8 PERMITS, FEES AND NOTICES**

4.8.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and for all other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required at the time the bids are received.

4.8.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.

4.8.3 It is not the responsibility of the Contractor to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Parks and Recreation Director in writing, and any necessary changes shall be accomplished by appropriate Modification.

4.8.4 If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulation, and without such notice to the Parks and Recreation Director, he shall assume full responsibility therefore and shall bear all costs attributable thereto.

#### **4.9 ALLOWANCES**

4.9.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by these allowances shall be supplied for such amounts and by such persons as the City may direct, but the Contractor will not be required to employ persons against whom he makes a reasonable objection.

4.9.2 Unless otherwise provided in the Contract Documents: (.1) these allowances shall cover the cost to the Contractor, less any applicable trade discount, of the materials and equipment required by the allowance delivered at the site, and all applicable taxes; (.2) the Contractor's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the original allowance shall be included in the contract Sum and not in the allowance; (.3) whenever the cost is more than or less than the allowance, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which will recognize changes, if any, in handling costs on the site, labor, installation costs, overhead, profit and other expenses.

#### **4.10 SUPERINTENDENT**

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

#### **4.11 PROGRESS SCHEDULE**

4.11.1 The Contractor, immediately after being awarded the Contract, shall prepare and submit for the City and Parks and Recreation Director's information an estimated progress schedule for the Work. The progress schedule shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

#### **4.12 DOCUMENTS AND SAMPLES AT THE SITE**

4.12.1 The Contractor shall maintain at the site for the City one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be available to the Parks and Recreation Director and shall be delivered to him for the City upon completion of the Work.

#### **4.13 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

4.13.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

4.13.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.

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

4.13.4 The Contractor shall review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of the Owner or any separate Contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents.

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

4.13.6 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Parks and Recreation Director's approval of Shop Drawings, Product Data or Samples under Subparagraph 2.2.14 unless the Contractor has specifically informed in writing of such deviation at the time of submission and the Parks and Recreation Director has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Parks and Recreation Director's approval thereof.

4.13.7 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Parks and Recreation Director on previous submittals.

4.13.8 No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Parks and Recreation Director as provided in Subparagraph 2.2.14. All such portions of the Work shall be in accordance with approved submittals.

#### **4.14 USE OF SITE**

4.14.1 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 any materials or equipment.

#### **4.15 CUTTING AND PATCHING OF WORK**

4.15.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly.

4.15.2 The Contractor shall not damage or endanger any portion of the Work or the work of the city or any separate Contractors by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the City or any separate Contractor except with the written consent of the City and of such separate Contractor. The Contractor shall not unreasonably withhold from the City or any separate Contractor his consent to cutting or otherwise altering the Work.

#### **4.16 CLEANING UP**



4.16.1 The Contractor at all times shall keep the construction site free from accumulation of waste materials or rubbish caused by his operations. At the completion of the work he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials.

4.16.2 If the Contractor fails to clean up at the completion of the Work, the City may do so as provided in Paragraph 3.4 and the cost thereof shall be charged to the Contractor.

#### **4.17 COMMUNICATIONS**

4.17.1 The Contractor shall forward all communications to the City through the Parks and Recreation Director.

#### **4.18 ROYALTIES AND PATENTS**

4.18.1 The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the City harmless from loss on account thereof, except that the City shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified, but if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Parks and Recreation Director.

#### **4.19 INDEMNIFICATION**

4.19.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the City and the Parks and Recreation Director and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (.1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (.2) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in Paragraph 4.18.

4.19.2 In any and all claims against the City or Parks and Recreation Director or any of their agents or employees by any employee of the Contractor, any Subcontractor or anyone directly or indirectly employed by any of the above or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 4.18 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or worker's compensation acts, disability benefit acts or other employee benefit acts.

4.19.3 The obligations of the Contractor under this Paragraph 4.18 shall not extend to the liability of the Parks and Recreation Director, his agents or employees, arising out of (.1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or

specifications, or (.2) the giving of or the failure to give directions or instruction by the Parks and Recreation Director, his agents or employees provided such giving or failure to give is the primary cause of the injury or damage.

## **ARTICLE 5 SUBCONTRACTORS**

### **5.1 DEFINITION**

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

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

### **5.2. AWARD OF SUBCONTRACTORS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

5.2.1 Unless otherwise required by Contract Documents or the Bidding Documents, the Contractor, as soon as practicable after the award of the Contract, shall furnish to the Parks and Recreation Director in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work. The Parks and Recreation Director will promptly reply to the Contractor in writing stating whether or not the City or the Parks and Recreation Director after due investigation, has reasonable objection to any such proposed person or entity. Failure of the City or Parks and Recreation Director to reply promptly shall constitute notice of no reasonable objection.

5.2.2 The Contractor shall not contract with any such proposed person or entity to whom the City or the Parks and Recreation Director has made reasonable objection under the provisions of Subparagraph 5.2.1. The Contractor shall not be required to contract with anyone to whom he has reasonable objection.

5.2.3 If the City or the Parks and Recreation Director has reasonable objection to any such proposed person or entity, the Contractor shall submit a substitute to whom the City or the Parks and Recreation Director has no reasonable objection, and the Contract Sum shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall be issued; however, no increase in the Contract Sum shall be allowed for any such substitution unless the Contractor has acted promptly and responsibly in submitting names as required by Subparagraph 5.2.1.

5.2.4 The Contractor shall make no substitution for any Subcontractor, person or entity previously selected if the City or Parks and Recreation Director makes reasonable objection to such substitution.

### **5.3 SUBCONTRACTUAL RELATIONS**

5.3.1 By an appropriate agreement, written where legally required for validity, 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 the terms of the Contract Document, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the City and the Parks and Recreation Director. Said agreement shall preserve and protect the rights of the City and the Parks and Recreation Director under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Documents, has against the City. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph 5.3, and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to his Sub-subcontractors.

## **ARTICLE 6 WORK BY CITY OR BY SEPARATE CONTRACTORS**

### **6.1 CITY'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS**

6.1.1 The City reserves the right to perform work related to the Project with its own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar Conditions of the contract. If the Contractor claims that delay or additional cost is involved because of such action by the City, he shall make such claim as provided elsewhere in the Contract Documents.

6.1.2 When separate contracts are awarded for different portions of the Project or other work on the site, the term Contractor in the Contract Documents in each case shall mean the Contractor who executes each separate City of Rolla Contractor Agreement.

6.1.3 The City will provide for the coordination of the work of its own forces and of each separate Contractor with the Work of the Contractor, who shall cooperate therewith as provided in Paragraph 6.2.

### **6.2 MUTUAL RESPONSIBILITY**

6.2.1 The Contractor shall afford the City and separate Contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate his Work with theirs as required by the Contract Documents.

6.2.2 If any part of the Contractor's Work depends for proper execution or results upon the work of the City or any separate Contractor, the Contractor shall, prior to proceeding with the Work, promptly report to the Parks and Recreation Director any apparent discrepancies or defects in such other work that renders it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acceptance of the City or separate Contractor's work as fit and proper to receive his Work, except as to defects which may subsequently become apparent in such work by others.

6.2.3 Any costs caused by defective or ill-timed work shall be borne by the party responsibly therefore.

6.2.4 Should the Contractor wrongfully cause damage to the work or property of the City, or to other work on the site, the Contractor shall promptly remedy such damage as provided in Subparagraph 10.2.5.

6.2.5 Should the Contractor wrongfully cause damage to the work or property of any separate Contractor, the Contractor shall upon due notice promptly attempt to settle with such other Contractor by agreement, or otherwise to resolve the dispute. If such separate Contractor sues or initiates an arbitration proceeding against the City on account of any damage alleged to have been caused by the Contractor, the City shall notify the Contractor who shall defend such proceedings at the City's expense, and if any judgment or award against the City arises therefrom the Contractor shall pay or satisfy it and shall reimburse the City for all attorneys' fees and court or arbitration costs which the City has incurred.

### **6.3 CITY'S RIGHT TO CLEAN UP**

6.3.1 If a dispute arises between the Contractor and separate Contractors as to their responsibility for cleaning up as required by Paragraph 4.15, the City may clean up and charge the cost thereof to the Contractors responsible therefore as the Parks and Recreation Director shall determine to be just.

## **ARTICLE 7 MISCELLANEOUS PROVISIONS**

### **7.1 GOVERNING LAW**

7.1.1 The Contract shall be governed by the law of the place where the Project is located.

### **7.2 SUCCESSORS AND ASSIGNS**

7.2.1 The City and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or

sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due to him hereunder, without the previous written consent of the City.

### **7.3 WRITTEN NOTICE**

7.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to him who gives the notice.

### **7.4 CLAIMS FOR DAMAGE**

7.4.1 Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

### **7.5 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND**

7.5.1 The City shall have the right to require the Contractor to furnish bonds covering the faithful performance of the Contract and the payment of all obligations arising thereunder if and as required in the Bidding Documents or in the Contract Documents.

### **7.6 RIGHTS AND REMEDIES**

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

7.6.2 No action or failure to act by the City, Parks and Recreation Director or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of nor acquiescence in any breach thereunder, except as may be specifically agreed in writing.

### **7.7 TESTS**

7.7.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any other public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the Parks and Recreation Director timely notice of its readiness so the Parks and Recreation Director may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals conducted by other public authorities. Unless otherwise provided, the City shall bear all costs of other inspections, tests, or approvals.

7.7.2 If the City determines that any Work requires special inspection, testing, or approval which Subparagraph 7.7.1 does not include, he will instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Subparagraph 7.7.1. If such special inspection or testing reveals a failure of the Work to comply with the

requirements of the Contract Documents, the Contractor shall bear all costs thereof, otherwise the City shall bear such costs, and an appropriate Change Order shall be issued.

7.7.3 Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered by him to the Parks and Recreation Director.

7.7.4 The Parks and Recreation Director or his designee(s) is to observe the inspections, tests or approvals required by the Contract Documents. He will do so promptly and, where practicable, at the source of supply.

## **7.8 INTEREST**

7.8.1 Payments due and unpaid under the Contract Document shall bear interest from thirty (30) days of due date. Payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing at the place of the Project.

## **7.9 ARBITRATION**

7.9.1 All claims, disputes and other matters in question between the Contractor and the City arising out of, or relating to, the Contract Documents or the breach thereof, except as provided in Subparagraph 2.2.11 with respect to the Parks and Recreation Director's decisions on matters relating to artistic effect, and except for claims which have been waived by the making or acceptance of final payment as provided by Subparagraphs 9.9.5, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association unless the parties mutually agree otherwise. No arbitration arising out of or relating to the Contract Documents shall include, by consolidation, joinder or in any other manner, the Parks and Recreation Director, his employees or consultants except by written consent containing a specific reference to the City of Rolla Contractor Agreement and signed by the Parks and Recreation Director, the City, the Contractor and any other person sought to be joined. No arbitration shall include by consolidation, joinder or in any other manner, parties other than the City, the Contractor and any other persons substantially involved in a common question of fact or law, whose presence is required if complete relief is to be accorded in the arbitration. No person other than the City or Contractor shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Any consent to arbitration involving an additional person or persons shall not constitute consent to arbitration of any dispute not described therein or with any person not named or described therein. The foregoing agreement to arbitrate and any other agreement to arbitrate with an additional person or persons duly consented to by the parties to the City of Rolla Contractor Agreement shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

7.9.2 Notice of the demand of arbitration shall be filed in writing with the other party of the City of Rolla-Contractor Agreement and with the American Arbitration Association, and a copy shall be filed with the Parks and Recreation Director. The demand for arbitration shall be made within the time limits specified in Subparagraph 2.2.12 where applicable, and in all other cases within a reasonable time after the claim, dispute or other matter in question has arisen, and in no

event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

7.9.3 Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any arbitration proceedings, and the City shall continue to make payments to the Contractor in accordance with the Contract Documents.

## **ARTICLE 8 TIME**

### **SCOPE OF WORK PAGE NO. 22 SPECIFIES 60 CALENDAR DAYS**

**8.0 BUY AMERICA POLICY** Any manufactured goods or commodities used or supplied in the performance of this contract or any subcontract thereto shall be manufactured or produced in the United States as required in Section 34.353, R.S.Mo.

### **8.1 DEFINITIONS**

8.1 Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Substantial Completion of the Work as defined in Subparagraph 8.1.3, including authorized adjustments thereto.

8.1.2 The date of commencement of the Work is the date established in a notice to proceed. If there is no notice to proceed, it shall be the date of the City of Rolla-Contractor Agreement or such other date as may be established therein.

8.1.3 The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the Parks and Recreation Director when construction is sufficiently complete in accordance with the Contract Documents, so the City can occupy or utilize the Work or designated portion thereof for the use for which it is intended.

8.1.4 The term day as used in the Contract Documents shall mean calendar day unless otherwise specifically designated.

### **8.2 PROGRESS AND COMPLETION**

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

8.2.2 The Contractor shall begin the Work on the date of commencement as defined in Subparagraph 8.1.2. He shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

### **8.3 DELAYS AND EXTENSIONS OF TIME**

8.3.1 If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the City or the Parks and Recreation Director, or by any employee of either, or by any separate Contractor employed by the City or by changes ordered in the Work, or by labor disputes, fire,

unusual delay in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control, or by delay authorized by the City pending arbitration, or by any other cause which the Parks and Recreation Director determines may justify the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Parks and Recreation Director may determine.

8.3.2 Any claim for extension of time shall be made in writing to the Parks and Recreation Director not more than twenty (20) days after the commencement of the delay; otherwise it shall be waived. In the case of a continuing delay only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work.

8.3.3 If no agreement is made stating the dates upon which interpretations as provided in Subparagraph 2.2.8 shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until fifteen (15) days after written request is made for them, and not then unless such claim is reasonable.

8.3.4 This Paragraph 8.3 does not exclude the recovery of damages for delay by either party under other provisions of the Contract Documents.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **9.1 CONTRACT SUM**

9.1.1 The Contract Sum is stated in the City of Rolla-Contractor Agreement and, including authorized adjustments thereto, is the total amount payable by the City to the Contractor for the performance of the Work under the Contract Documents.

### **9.2 SCHEDULE OF VALUES**

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Parks and Recreation Director a schedule of values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Parks and Recreation Director may require. This Schedule, unless objected to by the Parks and Recreation Director, shall be used only as a basis for the Contractor's Applications for Payment.

### **9.3 APPLICATIONS FOR PAYMENT**

9.3.1 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the City either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 9 as "liens"; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.



## **9.4 CERTIFICATES FOR PAYMENT**

9.4.1 The Parks and Recreation Director will, within seven (7) days after the receipt of the Contractor's Application for Payment, either issue a Certificate for Payment to the City, with a copy to the Contractor for such amount as the Parks and Recreation Director determines is properly due or notify the Contractor in writing his reasons for withholding a Certificate as provided in Subparagraph 9.6.1.

9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Parks and Recreation Director to the City, based on his observations at the site as provided in Subparagraph 2.2.3 and the data comprising the Application for Payment, that the Work has progressed to the point indicated; that, to the best of his knowledge information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his Certificate); and that the Contractor is entitled to payment in the amount certified. However, by issuing a Certificate for Payment, the Parks and Recreation Director shall not thereby be deemed to represent that he has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work or that he has reviewed the construction means, methods, techniques, sequences, or procedures, or that he has made any examination to ascertain how or for what purpose the Contractor has used the moneys previously paid on account of the Contract Sum.

## **9.5 PROGRESS PAYMENTS**

9.5.1 After the Parks and Recreation Director has issued a Certificate for Payment, the City shall make payment in the manner and within the time provided in the Contract Documents.

9.5.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the City, out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which the Subcontractor is entitled, reflecting the percentage actually retained, if any, from payment to the Contractor on account of such Subcontractor's Work. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to his Subcontractors in similar manner.

9.5.3 The Parks and Recreation Director may, on request and at his discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Parks and Recreation Director on account of Work done by such Subcontractor.

9.5.4 Neither the City nor the Parks and Recreation Director shall have any obligations to pay or to see to the payment of any moneys to any Subcontractor except as may otherwise be required by law.

9.5.5 No Certificate for a payment, nor any partial or entire use or occupancy of the Project by the City shall constitute an acceptance of any Work not in accordance with the Contract Documents.

## **9.6 PAYMENTS WITHHELD**

9.6.1 The Parks and Recreation Director may decline to certify payment and may withhold his Certificate in whole or in part to the extent necessary reasonably to protect the City, if in his opinion he is unable to make representations to the City as provided in Subparagraph 9.4.2. If the Parks and Recreation Director is unable to make representations to the City as provided in Subparagraph 9.4.2 and to certify payment in the amount of the Application, he will notify the Contractor as provided in Subparagraph 9.4.1. If the Contractor and the Parks and Recreation Director cannot agree on a revised amount, the Parks and Recreation Director will promptly issue a Certificate for Payment for the amount for which he is able to make such representations to the City. The Parks and Recreation Director may also decline to certify payment or, because of subsequently discovered evidence or subsequent observations, he may nullify the whole or any part of any Certificate for Payment previously issued, to such extent as may be necessary in his opinion to protect the City from loss because of:

- .1 defective Work not remedied,
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims,
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment,
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum,
- .5 damage to the City or another Contractor,
- .6 reasonable evidence that the Work will not be completed within the Contract time, or
- .7 persistent failure to carry out the Work in accordance with the Contract Document.

9.6.2 When the above grounds in Subparagraph 9.6.1 are removed, payment shall be made for amounts withheld because of them.

9.6.3 In the event that the Missouri Department of Labor and Industrial Relations has determined that a violation of Section 292.675, R.S.Mo, has occurred and the at penalty as described in Section 10.4.1 shall be assessed, the City shall withhold and retain all sums and amounts due and owing when making payments to Contractor under this Contract.

## **9.7 FAILURE OF PAYMENT**

9.7.1 If the Parks and Recreation Director does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the City does not pay the Contractor within thirty (30) days after the date established in the Contract Documents any amount certified by the Parks and Recreation

Director or awarded by arbitration, then the Contractor may, upon seven (7) additional days' written notice to the City and the Parks and Recreation Director, stop the Work until payment of the amount owing has been received. The Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which shall be effected by appropriate Change Order in accordance with Paragraph 12.3.

## **9.8 SUBSTANTIAL COMPLETION**

9.8.1 When the Contractor considers that the Work, or a designated portion thereof which is acceptable to the City, is substantially complete as defined in Subparagraph 8.1.3, the Contractor shall prepare for submission to the Parks and Recreation Director a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the Parks and Recreation Director on the basis of an inspection determines that the Work or designated portion thereof is substantially complete, he will then prepare a Certificate of Substantial Completion, which shall establish the Date of Substantial Completion, shall state the responsibilities of the City and the Contractor for security, maintenance, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the City and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.

9.8.2 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Parks and Recreation Director, the Owner shall make payment, reflecting adjustment in retainage, for such Work or portion thereof, as provided in the Contract Documents.

## **9.9 FINAL COMPLETION AND FINAL PAYMENT**

9.9.1 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 Parks and Recreation Director or his designee(s) will promptly make such inspection and, when he finds the Work acceptable under the Contract Documents and the Contract fully performed, he will promptly issue a final Certificate for Payment stating that to the best of his knowledge, information and belief, and on the basis of his observations and inspections, the Work has been completed in accordance with the 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. The Parks and Recreation Director's final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Subparagraph 9.9.2 have been fulfilled.

9.9.2 Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Parks and Recreation Director (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the City or his property might in any way be responsible, have been paid or otherwise satisfied, (2)

consent of surety, if any, to final payment and (3) if required by the City other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the contract, to the extent and in such form as may be designated by the City. If any Subcontractor refuses to furnish a release or waiver required by the City, the Contractor may furnish a release or waiver required by the City, the Contractor may furnish a bond satisfactory to the City to indemnify him against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the City all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.9.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting final completion, and the Parks and Recreation Director so confirms, the City shall, upon application by the Contractor and certification by the Parks and Recreation Director, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished as provided in Paragraph 7.5, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Parks and Recreation Director prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.9.4 The making of final payment shall constitute a waiver of all claims by the City except those arising from:

- .1 unsettled liens,
- .2 faulty or defective Work appearing after Substantial Completion,
- .3 failure of the Work to comply with the requirements of the Contract Document, or
- .4 terms of any special warranties required by the Contract Documents.

9.9.5 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final Application for Payment. Any payment however, final or otherwise, shall not release the Contractor or its sureties from any obligation under the contract documents or the performance bonds.

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

### **10.1 SAFETY PRECAUTIONS AND PROGRAMS**

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions, signs, barricades and programs in connection with the work.

### **10.2 SAFETY OF PERSONS AND PROPERTY**

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

- .1 all employees on the Work and all other persons who may be affected thereby;
- .2 all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

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

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all 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 utilities.

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

10.2.5 The Contractor shall promptly remedy all damage or loss (other than damage or loss insured under Paragraph 11.3) to any property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, and Subcontractor, and Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to the acts or omissions of the City or Parks and Recreation Director or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to his obligations under Paragraph 4.18.

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

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

### **10.3 EMERGENCIES**

10.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation or

extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article 12 for Changes in the Work.

## **10.4 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)**

### **10.4.1 Safety Training**

Contractor shall provide a ten (10) hour Occupational Safety and Health Administration (OSHA) construction safety program for all employees who will be on-site at the project. The construction safety program shall include a course in construction safety and health that is 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 Section 292.675, R.S.Mo.

Contractor shall require its on-site employees to complete a safety program within sixty (60) days after the date work on the project commences.

Contractor acknowledges and agrees that any of Contractor's employees found on the project site without the documentation of the successful completion of a construction safety program shall be required to produce such documentation within twenty (20) days, or will be subject to removal from the project.

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

### **10.4.2 Notice of Penalties for Failure to Provide Safety Training**

Pursuant to Section 292.675, R.S.Mo, Contractor shall forfeit to City as a penalty two thousand five hundred dollars (\$2,500.00), plus one hundred dollars (\$100.00) for each on-site employee employed by Contractor or its Subcontractor, for each calendar day, or portion thereof, such on-site employee is employed without the construction safety training required in Section 10.4.1 above.

The penalty described in above Subsection A of this section shall not begin to accrue until the time periods described in Section 10.4.1 above have elapsed.

Violations of Section 10.4.1 above and imposition of the penalty described in this Section shall be investigated and determined by the Missouri Department of Labor and Industrial Relations.

## **10.5 MISSOURI REVISED STATUTES**

### **Chapter 319 - General Safety Requirements - Sections 319.075 - 319.090**

#### **10.5.1 Citation of law.**

319.075. Sections 319.075 to 319.090 may be cited and shall be known as the "Overhead Power Line Safety Act".

(L. 1991 S.B. 214 & 264 § 1)

(2005) Act does not affect or create an exception to an employer's immunity under the Worker's Compensation Act. *Crow v. Kansas City Power and Light Co.*, 174 S.W.3d 523 (Mo.App. W.D.).

### **10.5.2 Definitions.**

319.078. As used in sections 319.075 to 319.090, the following terms mean:

(1) "Authorized person":

(a) An employee of a public utility or an employee of a contractor which has been authorized by a public utility to perform construction, operation or maintenance on or near the poles or structures of such utility;

(b) An employee of a cable television or communication services company or an employee of a contractor authorized to make cable television or communication service attachments; or

(c) An employee of the state or a county or municipality which has authorized circuit construction, operation or maintenance on or near the poles or structures of a public utility;

(2) "High voltage", electric potential in excess of six hundred volts measured between conductors or between a conductor and the ground;

(3) "Overhead lines", all electrical conductors installed above ground;

(4) "Person", an individual, firm, joint venture, partnership, corporation, association, municipality, or governmental unit which performs or contracts to perform any function or activity upon any land, building, highway or other premises in proximity to an overhead line;

(5) "Public utility" includes those entities defined as such in section 386.020, R.S.Mo, as well as municipally owned electrical systems and electric cooperatives provided for in chapters 91 and 394, RSMo.

(L. 1991 S.B. 214 & 264 § 2)

Activities within ten feet of power lines prohibited, exceptions.

319.080. Unless danger against contact with high voltage overhead lines has been guarded against as provided by section 319.083, no person, individually or through an agent or employee, shall store, operate, erect, maintain, move or transport any tools, machinery, equipment, supplies or materials or any other device that conducts electricity, within ten feet of any high voltage overhead line, or perform or require any other person to perform any function or activity upon any land, building, highway or other premises, if at any time during the performance thereof it could reasonably be expected that the person performing the function or activity could move or be placed within ten feet of any high voltage overhead line.

(L. 1991 S.B. 214 & 264 § 3)

### **10.5.3 Special devices and precautions required--costs.**

319.083. 1. When any person desires to temporarily carry out any function or activity in closer proximity to any high voltage overhead line than is permitted by sections 319.075

to 319.090, the person or persons responsible for the function or activity shall notify the public utility which owns or operates the high voltage overhead line of the function or activity, and shall make appropriate arrangements with the public utility for temporary mechanical barriers, temporary de-energization and grounding of the conductors, temporary rerouting of electric current or temporary relocating of the conductors, before proceeding with any function or activity which would impair the clearances required by sections 319.075 to 319.090.

2. A person requesting a public utility to provide temporary clearances or other safety precautions shall be responsible for payment of those costs incurred by such utility in the temporary rerouting of electric current or the temporary relocating of the conductors. Upon request, a public utility shall provide a written cost estimate for the work needed to provide temporary clearances or other safety precautions. A public utility is not required to provide such clearances or other safety precautions until payment of the estimated amount has been made. Unless otherwise agreed to, a public utility shall commence work on such clearances or other safety precautions within seven working days after payment has been made.

(L. 1991 S.B. 214 & 264 § 4)

#### **10.5.4 Presumption of negligence, when, rebuttable.**

319.085. If a violation of any of the provisions of sections 319.075 to 319.090 results in physical or electrical contact with any high voltage overhead line such violation shall be a rebuttable presumption of negligence on the part of the violator in the event such violation shall cause injury, loss or damage, and, notwithstanding any other law to the contrary, the public utility shall have the right of contribution against any such violator. In addition to any penalties provided herein, liability under common law may apply.

(L. 1991 S.B. 214 & 264 § 5)

#### **10.5.5 Exemptions from law.**

319.088. Sections 319.075 to 319.090 shall not apply to:

(1) Construction, operation or maintenance of power lines and telecommunications lines or authorized attachments thereto by an authorized person as defined in section 319.078; or

(2) Governmental entities responding to an emergency situation.

(L. 1991 S.B. 214 & 264 § 6)

#### **10.5.6 Violations, penalty.**

319.090. Any person who violates any of the provisions of sections 319.075 to 319.088 is guilty of a class B misdemeanor.

(L. 1991 S.B. 214 & 264 § 7)

## **ARTICLE 11 INSURANCE**

### **11.1 CONTRACTOR'S LIABILITY INSURANCE**



11.1.1 The Contractor shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

.1 claims under workers' or worker's compensation, disability benefit and other similar employee benefit acts;

.2 claims for damage because of bodily injury, occupational sickness or disease, or death of his employees;

.3 claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;

.4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person;

.5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and

.6 claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

11.1.2 The insurance required by Subparagraph 11.1.1 shall be written for not less than any limits of liability specified in the Contract Documents, or required by law, whichever is greater.

11.1.3 The insurance required by Subparagraph 11.1.1 shall include contractual liability insurance applicable to the Contractor's obligations under Paragraph 4.18.

11.1.4 Certificates of insurance acceptable to the City shall be filed with the City prior to commencement of the Work. These Certificates shall contain a provision that coverage afforded under the policies will not be cancelled until at least thirty days' prior written notice has been given to the Parks and Recreation Director.

## **11.2 CITY'S LIABILITY INSURANCE**

11.2.1 The City shall be responsible for purchasing and maintaining his own liability insurance and, at his option, may purchase and maintain such insurance as will protect him against claims which may arise from operations under the Contract.

## **11.3 CONTRACTOR'S BUILDERS' RISK INSURANCE**

11.3.1 The Contractor shall provide Builders' Risk Insurance to a minimum of the coverage or the value of the work.

## **ARTICLE 12**

## CHANGES IN THE WORK

### 12.1 CHANGE ORDERS

12.1.1 A Change Order is a written order to the Contractor signed by the Mayor and the Parks and Recreation Director issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. A Change Order signed by the Contractor indicates his agreement therewith, including the adjustment in the Contract Sum or the Contract Time.

12.1.2 The City, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents.

12.1.3 The cost or credit to the City resulting from a change in the Work shall be determined in one or more of the following ways:

- .1 by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 by unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 by cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 by method provided in Subparagraph 12.1.4.

12.1.4 If none of the methods set forth in Clauses 12.1.3.1, 12.1.3.2, or 12.1.3.3 is agreed upon, the Contractor, provided he receives a written order signed by the Mayor, shall promptly proceed with the Work involved. The cost of such Work shall then be determined by the Parks and Recreation Director on the basis of the reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Clauses 12.1.3.3 and 12.1.3.4 above, the Contractor shall keep and present, in such form as the Parks and Recreation Director may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract Documents, cost shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; workers, or worker's compensation insurance; bond premiums; rental value of equipment and machinery; and the additional cost of supervision and field office personnel directly attributable to the change. Pending final determination of cost to the Owner, payments on account shall be made on the Parks and Recreation Director's Certificate for Payment. The amount of credit to be allowed by the Contractor to the City of any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Parks and Recreation Director. When both additions and

credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

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

## **12.2 CONCEALED CONDITIONS**

12.2.1 Should concealed conditions encountered in the performance of the Work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents, or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract be encountered, the Contract Sum shall be equitably adjusted by Change Order upon claim by either party made within twenty days after the first observance of the conditions.

## **12.3 CLAIMS FOR ADDITIONAL COST**

12.3.1 If the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the Parks and Recreation Director written notice thereof within twenty days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with Paragraph 10.3. No such claim shall be valid unless so made. If the City and the Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined by the Parks and Recreation Director. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

12.3.2 If the Contractor claims that additional cost is involved because of, but not limited to, (1) any written interpretation pursuant to Subparagraph 2.2.8, (2) any order by the Owner to stop the Work pursuant to Paragraph 3.3 where the Contractor was not at fault, (3) any written order for a minor change in the Work issued pursuant to Paragraph 12.4, or (4) failure of payment by the Owner pursuant to Paragraph 9.7, the Contractor shall make such claim as provided in Subparagraph 12.3.1.

## **12.4 MINOR CHANGES IN THE WORK**

12.4.1 The Parks and Recreation Director will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an 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.

# **ARTICLE 13 UNCOVERING AND CORRECTION OF WORK**

### **13.1 UNCOVERING OF WORK**

13.1.1 If any portion of the Work should be covered contrary to the request of the Parks and Recreation Director or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Parks and Recreation Director, be uncovered for his observation and shall be replaced at the Contractor's expense.

13.1.2 If any other portion of the Work has been covered which the Parks and Recreation Director has not specifically requested to observe prior to being covered, the Parks and Recreation Director may request to see such Work and it shall be uncovered by the Contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the City. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it be found that this condition was caused by the City or a separate Contractor as provided in Article 6, in which event the City shall be responsible for the payment of such costs.

### **13.2 CORRECTION OF WORK**

13.2.1 The Contractor shall promptly correct all Work rejected by the Parks and Recreation Director as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the Parks and Recreation Director's additional services made necessary thereby.

13.2.2 If, within one year after the Date of Substantial Completion of the Work or designated portion thereof or within one year after acceptance by the City of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the City to do so unless the City has previously given the Contractor a written acceptance of such condition. This obligation shall survive termination of the Contract. The City shall give such notice promptly after discovery of the condition.

13.2.3 The Contractor shall remove from the site all portions of the Work which are defective or non-conforming and which have not been corrected under subparagraphs 4.5.1, 13.2.1 and 13.2.2, unless removal is waived by the City.

13.2.4 If the Contractor fails to correct defective or nonconforming Work as provided in Subparagraphs 13.2.1, and 13.2.2, the City may correct it in accordance with Paragraph 3.4.

13.2.5 If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time fixed by written notice from the Parks and Recreation Director, the City may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten days thereafter, the City may upon ten additional days' written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the Parks and Recreation

Director's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the City.

13.2.6 The Contractor shall bear the cost of making good all work of the City or separate Contractors destroyed or damaged by such correction or removal.

13.2.7 Nothing contained in this Paragraph 13.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 4.5 hereof. The establishment of the time period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his 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 his obligations other than specifically to correct the Work.

### **13.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK**

13.3.1 If the Parks and Recreation Director prefers to accept defective or nonconforming Work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## **ARTICLE 14 TERMINATION OF THE CONTRACT**

### **14.1 TERMINATION OF THE CONTRACT**

14.1.1 If the Work is stopped for a period of thirty days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, or if the work should be stopped for a period of thirty days by the Contractor because the Parks and Recreation Director has not issued a Certificate for Payment as provided in Paragraph 9.7 or because the City has not made payment thereon as provided in Paragraph 9.7, then the Contractor may, upon seven additional days' written notice to the City and the Parks and Recreation Director, terminate the Contract and recover from the City payment for all Work executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit and damages.

### **14.2 TERMINATION BY THE CITY**

14.2.1 If the Contractor is adjudged a bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he

persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Contract Documents, then the City, upon certification by the Parks and Recreation Director that sufficient cause exists to justify such action may without prejudice to any right or remedy and after giving the Contractor and his surety, if any, seven days' written notice, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method he may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the work is finished.

14.2.2 If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including compensation for the Parks and Recreation Director's additional services 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 amount to be paid to the Contractor or to the City, as the case may be, shall be certified by the Parks and Recreation Director, upon application, in the manner provided in Paragraph 9.4, and this obligation for payment shall survive the termination of the Contract.

## **ARTICLE 15 SUPPLEMENTAL GENERAL CONDITIONS**

### **15.1 CERTIFICATE OF OWNER'S ATTORNEY**

15.1.1 The CERTIFICATE OF OWNER'S ATTORNEY shall be a part of the CONTRACT DOCUMENTS.

### **15.2 CONFLICT OF INTEREST**

15.2.1 No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this AGREEMENT or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this AGREEMENT if made with a corporation for its general benefit.

15.2.2 No official of the OWNER who is authorized in such capacity and on behalf of the OWNER to negotiate, make, accept or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspecting, construction of the project, shall become directly or indirectly interested personally in this AGREEMENT or in any part thereof. No officer, employee, ARCHITECT, ATTORNEY, Parks and Recreation Director or INSPECTOR of or for the OWNER who is authorized in such capacity and on behalf of the OWNER who is in any legislative, executive, supervisory, or other similar function in connection with the construction of the project, shall become directly or indirectly interested personally in this AGREEMENT in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

### **15.3 COPELAND “ANTI-KICK-BACK ACT”**

#### 15.3.1 Title 18, U.S.C.

##### 874. Kickbacks from public works employees:

Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

#### 15.3.2 Title 40, U.S.C. (as amended)

##### 276c. Regulations governing Contractors and subcontractors:

The Secretary of Labor shall make reasonable regulations for CONTRACTORS and SUBCONTRACTORS engaged in the construction, prosecution, completion or repair of public buildings, public works or building or works financed in whole or in part by loans or grants from the United States, including a provision that each CONTRACTOR and SUBCONTRACTOR shall furnish weekly a statement with respect to the wages paid each employee during the preceding week. Section 1001 of Title 18 of the United States Code (Criminal Code and Criminal procedure) shall apply to such statements.

The OWNER shall report all suspected or reported violations to the Department of Natural Resources.

### **15.4 CLEAN AIR ACT**

15.4.1 If the contract exceeds \$100,000, the CONTRACTOR agrees to comply with all the requirements of Section 114 of the Clean Air Act and (42 U.S.C. 1857 C-9) Section 308 of the Water Pollution Control Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. Such regulations and guidelines can be found at 40 C.F.R. 15.4 and 40 FR 17126 dated April 16, 1975. In so doing the CONTRACTOR further agrees:

15.4.2 As a condition for the award of contract, to notify the OWNER of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

15.4.3 To certify that any facility to be utilized in the performance of any nonexempt Contractor subcontract is not listed on the EPA list of Violating Facilities pursuant to 40 C.F.R. 15.20 as of the date of contract award.

15.4.4 To include or cause to be included the above criteria and requirements in every nonexempt subcontract and that the CONTRACTOR will take such action as the Government may direct as a means of enforcing such provisions.

15.4.5 As used in these paragraphs the term “facility” means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased or supervised by a grantee, cooperator, CONTRACTOR, or SUBCONTRACTOR, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are collocated in one geographic area

## **SPECIAL CONDITIONS**

### **1.1 INSURANCE**

Contractor shall provide and maintain during the life of the Contract and until final acceptance of the work, insurance acceptable to the City which will afford protection and coverage in accordance with the requirements set forth below.

### **1.2 WORKERS' COMPENSATION INSURANCE**

Workers' Compensation Insurance for all employees at the site of the project, and in case any work is sublet, Contractor shall require any Subcontractor similarly to provide Workers' Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by Contractor. In case any class of employees engaged in hazardous work under this contract at the site of the project is not covered under the Workers' Compensation Statute, the Contractor shall provide and shall cause each Subcontractor to provide Employer's Liability Insurance. Contractor shall provide coverage under the “Occupational Disease Act” of the State of Missouri, in addition to the above requirements if the operations of the Contractor or any Subcontractor are applicable thereunder, Workers' Compensation Insurance shall comply in all respects with the requirements of the statutes of the State of Missouri.

### **1.3 PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE**

Public Liability and Property Damage Insurance in comprehensive general liability form as well shall protect Contractor and any Subcontractor performing work covered by this contract from claims for damages for personal injury, including wrongful death, and claims for property damage which may arise from the operations under the contract, including all trucks and automobiles used, whether owned or not, and whether such operations be by the contractor or any Subcontractor or by anyone directly or indirectly employed by either of them. The amount of insurance shall not be less than the following with the City to be named as Additional Named Insured with endorsement coverage.

(1) Public Liability Insurance: The Contractor shall carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue



insurance in Missouri, and to name the City as additional named insured with endorsement coverage in amounts sufficient to cover the sovereign immunity limits for Missouri public entities (\$3,000,000 per claimant and \$3,000,000 per occurrence) as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610 R.S.Mo.

(2) Property Damage Insurance shall be in the combined single limit of not less than \$3,000,000.00, however, that insurance on all automobiles and trucks shall be for bodily injury in the prescribed limits of not less than \$3,000,000.00. Such policy or policies shall be proper endorsement cover any liability of Contractor under the indemnification provision, Paragraph 4.18 of the General Conditions.

(3) Insurance Covering Special Hazards – The Public Liability and Property Damage Insurance Policy or policies of the Contractor shall provide coverage such as operation of material hoists, blasting or other use of explosives, and damage to underground property.

1.3.1 All insurance shall be procured through agencies and be written by insurance companies which are acceptable to and approved by Owner and shall be obtained and paid for by Contractor.

1.3.2 Within fourteen (14) days after award of the Contract, Contractor shall furnish the City with certificates that the City is covered by the required insurance, showing type, amount, class of operations covered, effective dates and dates of expiration of policies. All certificates shall contain substantially the statement: “The insurance covered by this certificate will not be cancelled or altered except after thirty (30) days’ written notice has been received by the City of Rolla, Missouri”. In addition, the original City’s protective policy will be forwarded to the City.

1.3.3 Upon receipt of any notice of cancellation or alteration, Contractor shall within five (5) days procure other policies of insurance similar in all respects to the policy or policies about to be cancelled or altered; and if Contractor fails to provide, procure and deliver acceptable policies of insurance or satisfactory certificates or other evidence thereof, Owner may obtain such insurance at the cost and expense of Contractor without notice to Contractor.

1.3.4 The Contractor shall provide Builders’ Risk Insurance to a minimum of the coverage of the value of the work.

1.3.5 It is understood and agreed that the insurance required by the provisions of this article is required in the public interest and that the City does not assume any liability for acts of Contractor, any Subcontractor, or their employees, in the performance of the Contract.

## **2.1 TIME FOR COMPLETION**

**2.1.1 THE TIME ALLOWED FOR COMPLETION IS GIVEN ON THE SCOPE OF WORK PAGE 22.**

## **3.1 LIQUIDATED DAMAGES**

3.1.1 In the event that the Contractor fails in the performance of the work specified and required to be performed within the period of time specified in the Contract Documents, the Contractor shall pay the Owner, as and for liquidated damages, and not as a penalty, the sum of \$100.00 (ONE HUNDRED DOLLARS) per calendar day that the Contractor shall be in default.

3.1.2 Liquidated Damages will be waived for any period of time covered by an extension of time as provided in Paragraph 8.3 of the General Conditions and under other provisions of the Contract Documents.

3.1.3 The Owner shall have the right to deduct Liquidated Damages from any payments due or to become due the Contractor or to recover compensation for damages for non-performance as provided for under other provisions of the Contract Documents.

#### **4.1 SPECIAL WAGE DETERMINATION**

4.1.1 The Contractor shall comply with the special wage determination pertaining to minimum wage rates to be paid workers employed on this project as determined by the Department of Labor and Industrial Relations, State of Missouri. See the enclosed State of Missouri Special Wage Determination.

#### **5.1 NONDISCRIMINATION IN EMPLOYMENT**

In connection with the performance of work under this Contract, the Contractor agrees as follows:

5.1.1 Contractor will not discriminate against any employee or application for employment because of race, creed, color, national origin or sex or marital status. The Contractor will take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, or national origin or sex or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

5.1.2 Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color or national origin or sex or marital status.

5.1.3 In the event of the Contractor's noncompliance with nondiscrimination clause of this Contract, the Owner may cancel this Contract in whole or in part.

#### **6.1 PAYMENTS**

6.1.1 All statements shall be subject to approval of the City's representative and the governing body of the City of Rolla.

6.1.2 The payment made to Contractor shall be on account of the total amount payable to Contractor by or for Owner, and all material and work covered by partial payment made shall thereupon become the sole property of Owner. No such payment shall be deemed to be in accord

and satisfaction as to any item or items for which such payment is made, and this provision shall not be construed as relieving Contractor from sole responsibility for care and protection of materials and work upon which payments have been made or restoration of any damaged work or as a waiver of the right of Owner to require fulfillment of all terms of the Contract.

6.1.5 Ordinarily no allowance will be made in estimates for materials delivered on site of work and not incorporated into work; however, items considered by Owner to be major items of considerable magnitude, if suitably stored, will be allowed in estimates on the basis of ninety percent (90%) of invoices, the value calculated in proportion to the contract price.

6.1.6 Retained percentages herein provided are to be retained and held for the sole protection and benefit of Owner, and no other person, firm or corporation shall have or assert any lien, claim or right whatsoever thereto, except as herein expressly provided.

6.1.7 The Contractor shall be responsible for supplying the City with weekly payroll sheets, Form No. 44-R1093.

6.1.8 All requests for payment shall be made to the City on forms approved by the Parks and Recreation Director.

6.1.9 The Contractor will be supplied with a tax exemption certificate for all materials purchased for the project.

## **7.1 HOLD HARMLESS AGREEMENT**

7.1. The following hold harmless agreement shall be executed and submitted within fourteen (14) days of award of bid.

## **8.1 AFFIDAVIT COMPLIANCE WITH THE PREVAILING WAGE LAW**

8.1.1 Before the final payment can be made to the Contractor on the project, the Contractor must complete and return the Affidavit Compliance with the Prevailing Wage Law form furnished at the end of the Special Conditions section

## **9.1 CONTRACTOR'S AFFIDAVIT REGARDING SETTLEMENT OF CLAIMS**

9.1. Before the final payment can be made on the project to the Contractor, the Contractor must complete and return the Contractor's Affidavit Regarding Settlement of Claims form furnished at the end of the Special Conditions Section.

**HOLD HARMLESS AGREEMENT FORM**

We, \_\_\_\_\_ agree to protect, indemnify, save and keep harmless the City of Rolla against and from any and all loss, cost, damage or expense, arising out of or from any accident or other occurrence on or about said premises, causing injury to any person or property whomsoever and whatsoever and will protect, indemnify and save and keep harmless the above mentioned party from any and all claims, costs or expense arising out of any failure of the Contractor in any respect to comply with and perform all the requirements and provisions agreed to and required by any law or ordinance, during the period commencing \_\_\_\_\_ at the premise of \_\_\_\_\_ .

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**AFFIDAVIT**  
**COMPLIANCE WITH THE PREVAILING LAW**

Before me, the undersigned Notary Public, in and for the county of \_\_\_\_\_,

State of \_\_\_\_\_, personally came and appeared

\_\_\_\_\_ of \_\_\_\_\_  
(Name and Title) (Company Name)

(a Corporation) (a Partnership) (a Proprietorship), and after being duly sworn did depose and say all provisions and requirement set out in Chapter 290, Sections 290.210 through and including 290.340, Missouri Revised Statutes, pertaining to the payment of wages to workers employed on public works projects have been fully satisfied and there has been no exception to the full and complete compliance with said provisions and requirements and with Wage Determination No. \_\_\_\_\_ or Annual Wage Order No. \_\_\_\_\_ issued by the Division of Labor Standards on Project \_\_\_\_\_,

(Job No.)

\_\_\_\_\_, \_\_\_\_\_ County, Missouri, and  
(Route or Location, if building construction)

completed on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

My commission expires \_\_\_\_\_, \_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
(Notary Public)

**CONTRACTOR'S AFFIDAVIT  
REGARDING  
SETTLEMENT OF CLAIMS**

\_\_\_\_\_, 20 \_\_\_\_\_

To the City of Rolla, Missouri

Gentlemen:

This is to certify that all lawful claims for material, lubricants, fuel, coal, coke, repairs on machinery, groceries and foodstuffs, equipment and tools consumed or used in connection with the construction of the above mentioned project, and all insurance premiums, both compensation and all other kinds of insurance on said work, and for all labor performed in said work, whether by subcontractor or claimant in person or by his employee, agent, servant, bailee or bailor, have been paid and discharged.

\_\_\_\_\_  
Contractor

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

State of \_\_\_\_\_

County of \_\_\_\_\_ ss.

Subscribed and sworn to before me this \_\_\_\_\_ day of

\_\_\_\_\_, 20 \_\_\_\_\_, at \_\_\_\_\_

\_\_\_\_\_  
Notary Public

SEAL

My Commission expires \_\_\_\_\_, 20\_\_\_\_\_ .

**WAGE DETERMINATION**

**PREVAILING WAGE NOTICE OF EXCESSIVE UNEMPLOYMENT**

**\*\*\* NOW IN EFFECT \*\*\***

Only Missouri laborers and laborers from nonrestrictive states are allowed by law to be employed on Missouri's public works projects when the unemployment rate exceeds 5% for two consecutive months. (See Sections 290.550 through 290.580 R.S.Mo.) The unemployment rate has exceeded 5% for the past two months. Therefore, this statute is in effect and will remain in effect as long as this notice is posted. For questions call (573) 751-3403. View the Frequently Asked Questions at [http://www.dolir.mo.gov/ls/faq/faq\\_PublicWorksEmployment.asp](http://www.dolir.mo.gov/ls/faq/faq_PublicWorksEmployment.asp) or view the statute 290.550 – 290.580 R.S.Mo, at <http://www.moga.mo.gov/statutes/C290.HTM>.

Nonrestrictive states, which includes the District of Columbia and the territories, and the words "United States" includes such district and territories, as of January 2008 are: Alabama, American Samoa, Arkansas, Georgia, Guam, Hawaii, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Nebraska, New Hampshire, New Mexico, New York, North Carolina, Northern Mariana Islands, Ohio, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington and Wisconsin.

## **WAGE RATES**

A legible list of all prevailing wage rates **must remain** posted in a prominent and easily accessible place at the worksite by each contractor and subcontractor on the project. It is a requirement the notice is posted during the full time that any worker is employed on the job as per RSMO 290.265 below.

### **Wage rates posted, where.**

290.265. A clearly legible statement of all prevailing hourly wage rates to be paid to all workmen employed in order to execute the contract and employed on the construction of the public works shall be kept posted in a prominent and easily accessible place at the site thereof by each contractor and subcontractor engaged in the public works projects under the provisions of this law and such notice shall remain posted during the full time that any such workman shall be employed on the public works.

(L. 1969 S.B. 142)

The Contractor will forfeit a penalty to the City of Rolla of \$100 per day (or portion of a day) for each worker who is paid less than the prevailing rate for any work done under the contract by the Contractor or by any Sub-contractor (see Section 290.250, RSMo, enclosed in the Laws Section.) For detailed information on rules and occupational titles, see 8 CSR 30-3.010 through 3.060 (enclosed in the Laws Section, Code of State Regulations – Prevailing Wage Rules.)