

**A RESOLUTION SELECTING SCE, INC. FOR THE 2023 TWIN OAKS PARKS LAKE PEDESTRIAN BRIDGE REPLACEMENT PROJECT AND AUTHORIZING THE NEGOTIATION OF AN AGREEMENT FOR SERVICES RELATED THERETO.**

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**WHEREAS**, to carry out a design build project to repair or replace the pedestrian bridge in Twin Oaks Park (the “Bridge Replacement Project”), the City of Twin Oaks (the “City”) sought sealed statements of qualifications (“Request for Qualifications”); and,

**WHEREAS**, in response to the Request for Qualifications, the City received statements from from two companies, namely, SCE, Inc., and Infrastructure Management, Inc., to provide the desired design build services to the City for the Bridge Replacement Project; and,

**WHEREAS**, Section 145.120 (“Alternative Construction Delivery Methods”) of the Twin Oaks Purchasing Policy provides standards for the City to use in determining the contractor to whom to award the contract; and,

**WHEREAS**, after reviewing the qualifications using the applicable criteria, the selection team has recommended the Board of Aldermen select SCE, Inc., and negotiate a contract with SCE, Inc.; and,

**WHEREAS**, the Board of Aldermen has considered the recommendation and has reviewed the statements of qualification received and has considered the criteria in Section 145.120 of the Twin Oaks Purchasing Code and based on the forgoing has determined to negotiate a contract with SCE, Inc. for the Bridge Replacement Project.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF TWIN OAKS, MISSOURI, AS FOLLOWS:**

**Section 1.** Based on the qualification-based selection process described above and upon the statement of qualifications submitted by SCE, Inc., the Board of Aldermen hereby selects SCE, Inc., and the Mayor and City Clerk/Administrator are hereby authorized to negotiate a contract with SCE, Inc, for the Bridge Replacement Project which contract shall be in substantially the form of the contract included in the Request for Qualifications and marked as “Exhibit 1” attached hereto and incorporated herein by reference.

**Section 2.** If the Mayor and City Clerk/Administrator are unable to negotiate a satisfactory contract with the SCE, Inc., negotiations with that firm shall be terminated. The Mayor and City Clerk/Administrator shall then undertake negotiations with Infrastructure Management, Inc. If there is no agreement with the second firm, negotiations with such firm shall be terminated.

**Section 3.** Upon successful negotiation of satisfactory contract terms, the final contract shall be placed on the Board’s agenda for consideration and approval.

**Section 4.** This Resolution shall be effective upon its passage by the Board of Aldermen and execution by the Mayor.

THIS RESOLUTION WAS PASSED AND APPROVED THE 15<sup>th</sup> DAY OF FEBRUARY 2023,  
BY THE BOARD OF ALDERMEN OF THE CITY OF TWIN OAKS, MISSOURI.



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Russ Fortune, Mayor

Attest:



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Frank Johnson, City Clerk

**Exhibit 1**  
**CITY-CONTRACTOR AGREEMENT**

THIS CITY-CONTRACTOR AGREEMENT (this “Agreement” or “City-Contractor Agreement”), is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_, 2023, by and between **SCE, Inc.**, a Missouri corporation having a principal office at 101 Skyview Lane, Labadie, MO 63055 (the “Contractor”), and the **City of Twin Oaks**, a Missouri municipal corporation located in St. Louis County (the “City”). *All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Contract Documents (as hereinafter defined).*

**RECITALS**

A. In response to the City requesting for qualifications for the 2023 Twin Oaks Park Bridge Replacement Design-Build Project (the “Project”), the Contractor has submitted a certain Proposal in accordance with the RFQ Documents to perform the Work.

B. After undertaking the qualification-based selection process, negotiating with Contractor **and further** due consideration, the City has selected the Contractor to perform the Work and the parties hereto desire to enter into this Agreement whereby the Contractor shall undertake the performance of the Work in accordance with the Contract Documents and the City shall pay the Contractor as hereinafter specified.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises hereinafter set forth the City and the Contractor hereby agree as follows:

1. **Contract Documents.** The entire agreement between the parties shall consist of this Executed City-Contractor Agreement and, without limitation, the following documents:

1. Notice to Responders
2. Instructions to Responders
3. Proposal Offer for Project (executed by Contractor)
4. Signature of Responder sheet
5. List of Resources and References (completed by Contractor)
6. List of Proposed Subcontractors and Suppliers (executed by Contractor)
7. Affidavit of Non-Collusion (executed by Contractor)
8. Anti-Discrimination Against Israel Act Certification (executed by Contractor)
9. Performance and Maintenance Bond (executed by Contractor and surety)
10. Payment Bond (executed by Contractor and surety)
11. General Conditions/Requirements (Exhibit B hereto)
12. Applicable Missouri Annual Wage Order
13. Job Special Provisions
14. Bid Bond (if submitted, executed by Contractor and surety)
15. Notice to Proceed (issued by City and receipt acknowledged by Contractor)

and shall also include any Exhibits to the above documents, any Addenda issued prior to receipt of bid proposals, any duly-issued Modifications, and all other documents contained or specified within the RFQ Package dated January 2023, as such may be on file in the office of the City Clerk of Twin Oaks,

Missouri (all of the foregoing collectively referred to as the "Contract Documents" are hereby incorporated in this Agreement by reference). Unless otherwise stated, to the extent that any terms or provisions within Contractor's Proposal conflicts with the terms or provisions within the City-Contractor Agreement or General Conditions (Exhibit B), such terms and provisions within the City-Contractor Agreement or General Conditions shall prevail.

2. **The Work/Contract Sum.** The Contractor shall furnish all labor, materials, tools, equipment and services, and perform and complete the Work required for the Project in accordance with this Agreement which shall include provision of every item specified in the Contract Documents necessary to complete the Project as designed. The Contract Sum is \$ \_\_\_\_\_, which includes all compensation to Contractor due for the Work. Any additional Work not within this Agreement that is hereinafter approved by the City in writing pursuant to a Change Order shall be completed for the unit prices set forth in the Contract Documents, if applicable.

3. **Time of Completion.** Contractor shall commence work under this Agreement as set forth in the JOB SPECIAL PROVISIONS and shall fully complete all items of the Work within the time set forth in the Contract Documents. The parties understand that time is of the essence and that the rate of progress and prompt completion are essential conditions, and that in the event the Work is not fully completed within the period provided herein, the Contractor shall pay to the City the sums provided in the Contract Documents.

4. **Guaranty.** The Contractor hereby expressly guarantees the aforesaid Work as to workmanship and quality of materials used in connection herewith for a term of one (1) year, commencing on the date of final acceptance by the City, and binds itself, its successors or assigns, to make all repairs or replacements which may become necessary within said period due to construction defects and nonconformity with the Contract Documents. Whenever notified by the City that said repairs or replacements are required, the Contractor shall at once make the same as directed at its own expense. If the Contractor does not proceed with such repairs or replacements within five (5) days after receipt of written notice, the City may use (and the Contractor agrees and consents to such use) the Performance and Maintenance Bond, according to the terms thereof, to make any necessary repairs or replacements to any portion of the Work. Upon expiration of the one (1) year guaranty period, the City shall release the Performance and Maintenance Bond, less any amounts reasonably necessary to remedy any of the Contractor's performance and/or maintenance obligations under this Agreement that may still be outstanding at the time of expiration of the guaranty period.

5. **Payment Bond.** If the Contract Sum is in excess of \$50,000 the Contractor shall furnish within five (5) days of notification of contract award a satisfactory Payment Bond in the full amount of the Contract Sum. The Payment Bond furnished shall meet all requirements of Section 107.170 of the Revised Statutes of Missouri, as amended, and shall guarantee the payment of any and all materials, incorporated, consumed or used in connection with the construction of such work, and all insurance premiums, both for compensation, and for all other kinds of insurance, said work, and for all labor performed in such work whether by subcontractor or otherwise, including payment of prevailing wage requirements of the State of Missouri. The submitted Payment Bond shall be substantially in the form of the "Form of Payment Bond" included within the Bid Documents.

6. **Performance and Maintenance Bond.** The Contractor shall also furnish within five (5) days of notification of contract award a satisfactory Performance and Maintenance Bond in the full amount of the Contract Sum. The Performance and Maintenance Bond furnished shall guarantee the faithful performance of the Work and warrant the Work for the guaranty period established in this City-

Contractor Agreement. The submitted Performance and Maintenance Bond shall be substantially in the form of the "Form of Performance and Maintenance Bond" included within the Bid Documents.

7. **Insurance.** The Contractor shall obtain and maintain during the term of the Project and the City-Contractor Agreement the insurance coverages at least equal to the coverages set forth in this paragraph 7, and as further provided in the General Conditions, but no event less than the individual and combined sovereign immunity limits established by Section 537.610 R.S.Mo. Insurance policies providing required coverages shall be with companies licensed to do business in the State of Missouri and rated no less than AA by Best or equivalent. All costs of obtaining and maintaining insurance coverages are included in the Bid Amount and no additional payment will be made therefor by the City.

Comprehensive General Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$450,000 per occurrence \$3,000,000 aggregate
Comprehensive Automobile Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$450,000 per occurrence \$3,000,000 aggregate

In addition, the Contractor and all subcontractors shall provide Worker's Compensation Insurance in at least statutory amounts for all workers employed at the Project site.

Before commencing any work, the Contractor shall provide to the City certificates of insurance evidencing the issuance and maintenance in force of the coverages required by this paragraph 7. Before commencing any work, the Contractor shall provide to the City certificates of insurance evidencing the issuance and maintenance in force of the coverages required by this paragraph 7 and bearing an endorsement precluding cancellation of or change in coverage without at least thirty (30) days written notice to the City. Any self-insurance or deductible above \$50,000.00 is not permitted. The City may waive any insurance coverages or amounts required to be carried by the Contractor under this paragraph when the City deems such waiver to be in the interest of the public health, safety, and general welfare. NOTHING HEREIN SHALL BE CONSTRUED AS A WAIVER OF THE CITY'S SOVEREIGN IMMUNITY UNDER SECTION 537.610.1 OR OTHERWISE. The purpose of the insurance required under this paragraph is to confirm that the Contractor has adequate insurance to cover the Contractor for tort claims that may arise out of the work. It is not for the purchase of insurance for the City EXCEPT FOR AND ONLY TO THE LIMITED EXTENT OF any claims against the City arising out of the Contractor's work and based upon one of the two statutory exceptions to sovereign immunity as expressly set forth in Section 537.600.1(1) and (2). To that limited extent, the City shall be named as an additional insured the policy bearing an endorsement that: "The Insurer shall not be liable to make any payment for Loss in connection with any Claim made against the City of Twin Oaks as an additional Insured that is barred by sovereign immunity and nothing contained in this Policy shall constitute a waiver of the City's sovereign immunity."

The City may waive any insurance coverages or amounts required by this paragraph 7 when the City deems such waiver to be in the interest of the public health, safety, and general welfare.

8. **Indemnification.** To the fullest extent permitted by law, the Contractor agrees to defend with counsel selected by the City, and indemnify and hold harmless the City, its officers, engineers, representatives, agents and employees from and against any and all liabilities, damages, losses, claims or suit, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or money damages, or

trespass, or any other circumstances, sustained by the City or others, arising from the Contractor's breach of the Contract or out of services or products provided by the Contractor or its subcontractors under the terms of this agreement. The Contractor shall not be liable for any loss or damage attributable solely to the negligence of the City. To the extent required to enforce this provision, the Contractor agrees that this indemnification requires the Contractor to obtain insurance in amounts specified in the Contract Documents and that the Contractor has had the opportunity to recover the costs of such insurance in the compensation set forth in this Agreement.

In any and all claims against the City or any of its agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

9. **Attorney Fees' and Costs.** The Contractor shall reimburse to the City any costs and attorneys' fees that the City may reasonably incur in pursuit of any remedies at law or equity or enforcement of any rights established in this Agreement, which may result from the Contractor's breach of the Agreement, the Contractor's failure to perform any obligation or requirement contained herein, or the City's enforcement of this Agreement.

10. **Liquidated Damages.** The Contractor agrees and acknowledges that time is of the essence of this Agreement and that delay in the prosecution of the Work and the Project will inconvenience the public and increase administrative costs of the City, the costs of which the Contractor and the City are incapable of ascertaining at this time. Should the Contractor, or in the case of Contractor's default, the surety, fail to complete the Work within the time stipulated in this Agreement, or within such extension of time as may be allowed by the City in the manner set forth in the Contract Documents, the Contractor (or surety, as applicable) shall pay to the City as liquidated damages, and not as a penalty, the sum equal to **1.5% of the total contract amount** for each calendar day that the Work remains uncompleted after the time allowed for the completion, including approved extensions. In the sole discretion of the City, the amount of the liquidated damages may be deducted from any money due the Contractor under this Agreement. Permitting the Contractor to finish the Work or any part thereof after the expiration of the time for completion or any approved extension shall in no way operate as a waiver of the City of any of rights under this Agreement.

11. **Compliance with Federal, State and Local Law.** The Contractor shall comply with all applicable federal, state and local law requirements for performance under this Agreement. The Contractor shall abide by all health and environmental requirements imposed by law in performance of its duties.

12. **Prevailing Wage.** The Contractor shall be required to comply with all applicable provisions concerning the payment of prevailing wages on public works projects, as provided in the General Conditions. A copy of the applicable Annual Wage Order and Incremental Increases for each occupational title required under this project is included in the Bid Documents and shall be included in the Contract Documents.

13. **Required OSHA Training.** Pursuant to Section 292.675 RSMo., Contractor shall require all on-site employees to complete the ten-hour training program as required under Subsection 292.675.2 RSMo. This program shall be provided by Contractor and shall be a ten- hour Occupational

Safety and Health Administration (OSHA) construction safety program for Contractor's on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations ("MoDOLIR") which is at least as stringent as an approved OSHA program. All employees are required to complete the program within sixty days of beginning work under this Agreement. Contractor shall further require all subcontractors under Contractor to provide the ten-hour training program required under Subsection 292.675.2 RSMo. to such subcontractors' on-site employees. On-site employees who have previously completed such ten-hour training program must hold documentation of prior completion of the program.

Notice is hereby given to Contractor that it shall be subject to the penalties set forth in Subsection 292.675.4 RSMo. and such penalties shall be forfeited to the City pursuant to such Subsection. MoDOLIR shall investigate any claim of violation of Section 292.675 RSMo. Upon City's receipt of notification from MoDOLIR of violations of 292.675 by Contractor and a determination by MoDOLIR that penalties shall be assessed for such violations, the City shall withhold and retain from the contract all sums and amounts due and owing to the City as a result of any violation of Section 292.675 RSMo. All words in this paragraph shall have the definitions as provided in Section 292.675.1 RSMo.

14. **Compliance with State Immigration Statutes.** As a condition for the award of this Agreement, the Contractor 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 with the Work. The Contractor shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Work. Such affidavits shall be in substantially the form provided in Exhibit A to this Agreement. The Contractor shall not be required to provide these affidavits to the City if such affidavits have been previously provided to the City within the past year. All words in this paragraph shall have the definitions as provided in Section 285.525 R.S.Mo.

Pursuant to Section 208.009 R.S.Mo., the Contractor shall provide at the earlier of submission of any bid or execution of any agreement affirmative proof that the Applicant for the Contractor is a citizen or a permanent resident of the United States or is lawfully present in the United States. The Applicant for the Contractor (or "Applicant") shall be the person authorized to prepare, submit and sign contract documents on behalf of the Contractor and shall be eighteen years of age or older. Such affirmative proof shall include documentary evidence recognized by the Missouri Department of Revenue when processing an application for a driver's license, a Missouri driver's license, as well as any document issued by the federal government that confirms an alien's lawful presence in the United States.

An Applicant who cannot provide the proof required under Section 208.009 R.S.Mo. at the time of submission of any bid may alternatively sign an affidavit under oath, attesting to either United States citizenship or classification by the United States as an alien lawfully admitted for permanent residence. The affidavit shall be on or consistent with forms prepared by the City, which shall be available from the City Clerk if needed. Any Applicant who signed an above-described affidavit must provide proof of lawful presence within the time provided in Subsection 208.009.5 R.S.Mo. for temporary public benefits and failure to provide such proof within such time may result in the City rescinding and voiding any Contract awarded to the Contractor.

15. **Taxes.** The City is exempt from federal excise tax and Missouri sales tax and the Contractor shall not charge the same to the City and shall comply in all respects with the Special Sales

Tax Provisions of the General Conditions.

16. **Other Representations, Warranties and Other Covenants by the Contractor.** The Contractor represents and warrants that the Contractor has been engaged in such work as is required for the Project and has provided services such as the ones to be performed under this Agreement to other municipalities and/or private enterprises and that the Contractor owns sufficient equipment and engages sufficient personnel to perform the Contractor's obligations under this Agreement. The Contractor further represents and warrants that the Contractor is an equal opportunity employer. The Contractor agrees that the Contractor shall not use in any form or medium the name of the City for any advertising unless the Contractor receives the prior written consent of the City.

17. **Amendment: Waiver.** No amendment, modification or waiver of any provision of this Agreement shall be effective unless in a writing signed by an authorized representative of the party against whom such provision as amended or modified or such waiver is sought to be enforced. Failure to insist upon strict compliance with any of the terms or conditions of the Agreement shall not be deemed a waiver of such term or condition.

18. **Choice of Law.** This Agreement shall be governed by and construed and interpreted in accordance with the internal laws of the State of Missouri, without regard to its principles of conflict of laws.

19. **Headings.** The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.

20. **Severability.** The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision of this Agreement, which shall remain in full force and effect to the maximum extent permitted by law.

21. **Counterparts.** This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

CONTRACTOR

CITY OF TWIN OAKS, MISSOURI  
*Russ Torture*

\_\_\_\_\_  
Name

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Address

\_\_\_\_\_  
Attested

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Date



**Exhibit A**  
**AFFIDAVIT OF PARTICIPATION IN**  
**FEDERAL WORK AUTHORIZATION PROGRAM**

Comes now \_\_\_\_\_ first being duly sworn, on my oath and affirms that SCE, Inc., ("Contractor") is enrolled and will continue to participate in federal work authorization program with respect to employees that will work in connection with the contracted services related to and any incidental items associated with this work for the duration of the contract, if awarded, in accordance with Section 285.530.2, Revised Statutes of Missouri. I also affirm that the Company does not and will not knowingly employ a person who is an unauthorized alien in connection with the contracted services for the duration of the contract, if awarded. Attached to this affidavit is documentation of the Company's participation in a federal work authorization program.

**(ATTACH DOCUMENTATION SHOWING THAT COMPANY PARTICIPATES IN FEDERAL WORK AUTHORIZATION PROGRAM. ALSO ATTACH DRIVER'S LICENSE OR OTHER PROOF OF LAWFUL PRESENCE, AS PROVIDED IN THE GENERAL CONDITIONS – 208.009 RSMo.)**

*In Affirmation thereof, the facts stated above are true and correct (The undersigned understands that false statements made in this filing are subject to the penalties provided under Section 575.040, RSMo.).*

\_\_\_\_\_  
Signature (person with authority)

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

State of Missouri )

)

ss.

County of \_\_\_\_\_ )

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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

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

## Exhibit B

### GENERAL CONDITIONS

#### ARTICLE 1 CONTRACT DOCUMENTS

##### 1.1 DEFINITIONS

1.1.1 The Contract Documents. The Contract Documents shall include all those documents identified as the Contract Documents in the City-Contractor Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, or (2) a Change Order.

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

1.1.3 The Work. The term Work includes all labor necessary to complete the construction required by the Contract Documents, and all materials and equipment incorporated or to be incorporated in such construction.

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

1.1.5 Notice to Proceed. The written notice from the City notifying the Contractor of the date on or before which he is to begin prosecution of the work.

1.1.6 The term "Construction Schedule" shall mean the schedule provided under Section 1.4.

##### 1.2 EXECUTION, CORRELATION, INTENT, AND INTERPRETATIONS

1.2.1 The Contract Documents shall be signed in not less than triplicate by the City and Contractor.

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

1.2.3 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include all labor, materials, equipment and other items as provided in Subparagraph 3.3 necessary for execution and completion of the Work. Words which have well-known technical or trade meanings are used herein in accordance with such recognized meanings.

##### 1.3 COPIES FURNISHED AND OWNERSHIP

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

1.3.2 All Drawings, Specifications and copies thereof furnished by the City are and shall at all times remain property of the City. Such documents shall not be used on any other project. At the conclusion of the job, the Contractor shall submit one (1) set of mark ups for as-builts.

##### 1.4 CONSTRUCTION AND SUBMITTAL SCHEDULES

1.4.1 The Contractor, within twenty-one (21) days of the execution of the Contract, shall prepare and submit for the City's approval, Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as

required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. Thereafter, the Contractor shall prepare and update the construction schedule on a monthly basis ("Current Construction Schedule"), if not more frequently at the Contractor's discretion, to be submitted to the City with each Application for Payment.

1.4.2 The Contractor shall also prepare a submittal schedule, within twenty-one (21) days of the execution of the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the City's approval. The City's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the City reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

1.4.3 The Contractor shall perform the Work in general accordance with the most recent schedules approved by the City.

## **ARTICLE 2 CITY**

### **2.1 DEFINITION**

2.1.1 The City is the City of Twin Oaks as identified in the City-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number. The term City means the City or its authorized representative. The City may be alternatively referred to as the "Owner."

### **2.2 CITY RIGHT TO ACCESS AND OBSERVATION**

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

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

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

### **2.4 CITY'S RIGHT TO CARRY OUT THE WORK**

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform any provision of the Contract, the City may, after seven (7) days written notice to the Contractor, or such shorter time as may be reasonable under the circumstances, and without prejudice to any other remedy, the City may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or hereafter due the Contractor the cost of correcting such deficiencies. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the City promptly upon request.

## **ARTICLE 3 CONTRACTOR**

### **3.1 DEFINITION**

3.1.1 The Contractor is the person or organization identified as such in the City-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.

### **3.2 SUPERVISION AND CONSTRUCTION PROCEDURES**

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

### 3.3 LABOR AND MATERIALS

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

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

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

~~3.3.4~~ Unless the amount of the bid accepted by the City is in the amount of seventy-five thousand dollars or less (See § 290.230 RSMo.), the Contractor shall comply with, and is bound by, the provisions of Missouri law pertaining to the payment of wages on public works projects contained in Sections 290.210 through 290.340 RSMo., and any amendments thereto, including, but not limited to the following:

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

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

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

4. Certified payrolls shall also be submitted prior to final payment for all Work completed by the Contractor or Subcontractors.

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

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

### 3.4 WARRANTY

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

satisfactory to the City as to the kind and quality of all materials and equipment and shall guaranty the Work as provided in the City-Contractor Agreement after substantial completion of the Work.

3.4.2 The Contractor's general warranty and any additional or special warranties are not limited by the Contractor's obligations to specifically correct defective or nonconforming Work as provided in Article 12, nor are they limited by any other remedies provided in the Contract Documents. The Contractor shall also be liable for any damage to property or persons (including death) including consequential and direct damages relating to any breach of the Contractor's general warranty or any additional or special warranties required by the Contract Documents.

3.4.3 The Contractor must furnish all special warranties required by the Contract Documents to the City no later than Substantial Completion. The City may require additional special warranties in connection with the approval of "Or-Equals" or Substitutions, Allowance items, Work that is defective or nonconforming, or the acceptance of nonconforming Work pursuant to Article 12.

### 3.5 PERMITS, FEES, EASEMENTS, AND NOTICES

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

3.5.2 For the purposes of operating and maintaining the Project, the Contractor shall acquire the necessary lands, easements and rights-of-way privileges required for the same. The Contractor shall furnish, construct, remove and restore any necessary access roads or facilities. The Contractor shall not trespass on any property nor access the project site by any means other than City property or property over which Contractor has obtained access rights.

3.5.3 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Work. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the City in writing and any necessary changes shall be adjusted by appropriate Modification. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules, and regulations and without such notice to the City, the Contractor shall assume full responsibility therefor and shall bear all costs attributable thereto.

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

### 3.6 SUPERINTENDENT

3.6.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance on the Project site at all times during the progress of all work for the duration of the total project. This person shall be a non-working superintendent who will be responsible for the satisfactory progression of the work and to ensure that all work is being completed in accordance with the plans and specifications. He is also to relay any conflicts or discrepancies that arise in the plans to the City's representative for resolution or interpretation. The name of the person selected as superintendent and his qualifications shall be submitted at the time of bids and shall be approved in writing by the City. The superintendent shall not be changed except with the written consent or at the request of the City. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. The superintendent shall be the contact person whom the City will contact in the event of after-hours and weekend emergencies and the Contractor shall provide the City with the superintendent's contact information for such purpose. The superintendent must provide his or her email address, cell phone number and pager number to City and must be available to be contacted during all business hours, and outside of business hours in the event of an emergency. The superintendent must

be fluent in all languages necessary to effectively communicate with Contractor's staff assigned to the Project, and with all Subcontractors, to supervise and direct the Work and assist emergency responders.

### 3.7 RESPONSIBILITY FOR THOSE PERFORMING THE WORK

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

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

### 3.8 CONTRACTOR REVIEW OF CONTRACT DOCUMENTS & FIELD CONDITIONS; DRAWINGS AND SPECIFICATIONS AT THE SITE

3.8.1 By executing the Contract, the Contractor represents that the Contractor has reviewed and understands the Contract Documents, has visited the Site and is familiar with local conditions under which the Work is to be performed, has correlated personal observations with the requirements of the Contract Documents, and has notified the City of and obtained clarification of any discrepancies which have become apparent during the bidding or proposal period.

1. The Contractor must carefully study and compare the Contract Documents among themselves and further compare the Contract Documents with any other information furnished by the City before commencing Work at the Site and at frequent intervals during its progress.

2. The Contractor must make frequent inspections during the progress of the Work to confirm that Work previously performed by the Contractor is in compliance with the Contract Documents and applicable laws and regulations bearing on the performance of the Work and Referenced Standards and that portion of Work previously performed by the Contractor or by others are in proper condition to receive subsequent Work.

3. If the Contractor believes that any portions of the Contract Documents do not comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, or any orders by code enforcement officials or the City or its designees acting in the capacity of building code inspectors or Referenced Standards, the Contractor must promptly notify the City of the non-compliance as provided in Subsection 3.8.1.4 below and request direction before proceeding with the affected Work.

4. The Contractor must promptly notify the City in writing of any apparent errors, inconsistencies, omissions, ambiguities, construction impracticalities or code violations discovered as a result of the Contractor's review of the Contract Documents including any differences between actual and indicated dimensions, locations and descriptions, and must give the City timely notice in writing of same and of any corrections, clarifications, additional Drawings or Specifications, or other information required to define the Work in greater detail or to permit the proper progress of the Work. The Contractor must provide similar notice with respect to any variance between its review of the Site and physical data and Site conditions observed.

5. If the Contractor performs any Work involving an apparent error, inconsistency, ambiguity, construction impracticality, omission or code violation in the Contract Documents of which the Contractor is aware, or which could reasonably have been discovered by the review required by Section 3.8, without prompt written notice to the City and request for correction, clarification or additional Information, as appropriate, the Contractor does so at its own risk and expense and all claims relating thereafter are specifically waived.

3.8.2 The Contractor shall maintain at the site for the City one copy of all Drawings, Specifications, Addenda, approved Shop Drawings, approved Construction Schedule, Change Orders, and other

Modifications, in good order and marked to record all changes made during construction. The Drawings, marked to record all changes made during construction, shall be delivered to the City upon completion of the work. The Contractor shall display a Current Construction Schedule at the site for reference and reliance by the City and its representatives. The Contractor shall also maintain on the project site a survey level, legs, and rod at all times, which are deemed adequate by the City.

3.8.3 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved in writing by the City. The Contractor must correct at its cost, and without any adjustment in Contract Time, any Work the correction of which is required due to the Contractor's failure to obtain approval of a submittal required to have been obtained prior to proceeding with the Work, including, but not limited to, correction of any conflicts in the Work resulting from such failure.

### 3.9 CLEANING UP

3.9.1 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. The Contractor shall keep any materials stored on the jobsite within designated, fenced-in areas and all excavated material shall be hauled off the site at the time of excavation.

3.9.2 The Contractor shall be responsible at all times for keeping clean (*i.e.* free from mud, dirt, rock, and debris) all private access easements, public streets, adjacent parking areas, and other areas used by the Contractor (and its subcontractors, suppliers, etc.) in connection with the Work and the Project. Should any accumulation be deemed excessive or dangerous or be deemed a nuisance under the City Code, the City may direct the Contractor to thoroughly wash or remove the debris from the access easement, parking area, street or other areas at no cost to the City.

3.9.3 The Contractor must keep the Site and adjacent areas free from accumulation of waste materials or rubbish caused by operations under the Contract, and must keep tools, construction equipment, machinery and surplus materials suitably stored when not in use. If the Contractor fails to do so in a manner reasonably satisfactory to the City within forty-eight (48) hours after notice or as otherwise required by the Contract Documents, the City may clean the Site and back charge the Contractor for all costs associated with the cleaning. The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

3.9.4 The Contractor shall make satisfactory arrangements to store material and equipment after delivery and during construction off of the City right-of-way and in the place designated by the City, if applicable. If such storage is not on City property, the City will assume no responsibility for these arrangements.

3.9.5 "Removal" shall be defined as removal and disposal off the site unless otherwise specified or directed by the City.

### 3.10 USE OF SITE

3.10.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, private property rights, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

3.10.2 Except as may be specifically provided in the Contract Documents, the Contractor shall provide all necessary temporary facilities, including power, water, sanitation, scaffolding, storage, and security. If City makes any such facilities available to Contractor, it is without representation or warranty as to their adequacy for Contractor's use, and Contractor shall indemnify, defend, and hold City harmless from and against any claims arising out of Contractor's use of such facilities

### 3.11 CASH ALLOWANCES

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

## **ARTICLE 4 SUBCONTRACTORS**

### **4.1 DEFINITION**

4.1.1 A Subcontractor is a person or organization who has a direct contract with the Contractor to perform any of the Work. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative.

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

4.1.3 Nothing contained in the Contract Documents shall create any contractual relation between the City and any Subcontractor or Sub-subcontractor.

### **4.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

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

4.2.2 Prior to the award of the Contract, the City will notify the Bidder in writing if the City, after due investigation, objects to any such person or entity proposed by the Bidder pursuant to Subparagraph 4.2.1 above. If the City objects to any such proposed person or entity, the Bidder may, at his option, (1) withdraw his Bid, or (2) submit an acceptable substitute person or entity with no adjustment in his bid price.

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

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

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

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

### **4.3 SUBCONTRACTUAL RELATIONS**



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

1. Require the Work to be performed in accordance with the requirements of the Contract Documents;
2. Require submission to the Contractor of applications for payment under each subcontract to which the Contractor is a party, in reasonable time to enable the Contractor to apply for payment in accordance with Article 8 hereof;
3. Require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to the Contractor (via any Subcontractor or Sub-subcontractor where appropriate) in sufficient time so that the Contractor may comply in the manner provided in the Contract Documents for like claims by the Contractor upon the City;
4. Waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by the property insurance described in Paragraph 10.2, except such rights as they may have to the proceeds of such insurance held by the City as trustee under said Paragraph 10.2;
5. Obligate each Subcontractor specifically to consent to the provisions of this Paragraph 4.3; and
6. Require the Subcontractor (and the Sub-subcontractor) to defend, with counsel selected by the City, indemnify, and hold harmless the City against all claims, damages, losses, expenses and attorneys' fees arising out of or resulting from the performance of the Work by Subcontractor, and its agents and employees, unless such claims, damages or losses are caused solely by the negligent act of the City.

#### 4.4 PAYMENTS TO SUBCONTRACTORS

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

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

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

### ARTICLE 5 SEPARATE CONTRACTS

#### 5.1 CITY'S RIGHT TO AWARD SEPARATE CONTRACTS

5.1.1 The City reserves the right to award other contracts on other terms and conditions in connection with other portions of the Project.

#### 5.2 MUTUAL RESPONSIBILITY OF CONTRACTORS

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

5.2.2 If any part of the Work depends for proper execution or results upon the work of any other separate contractor, the Contractor shall inspect and promptly report to the City any apparent discrepancies or

defects in such work that render it unsuitable for proper execution of the Work. Failure of the Contractor to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper to receive the Work, except as to defects which may develop in the other contractor's work after the execution of the Contractor's Work that could not have been discovered by the Contractor upon reasonable inspection.

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

### 5.3 CITY'S RIGHT TO CLEAN UP

5.3.1 If a dispute arises between the separate contractors as to their responsibility for cleaning up as required by Paragraph 3.9, the City may clean up and charge the cost thereof to the several contractors.

## ARTICLE 6 MISCELLANEOUS PROVISIONS

### 6.1 GOVERNING LAW

6.1.1 The Contract shall be governed by the laws of the State of Missouri and venue shall be in St. Louis County, Missouri.

### 6.2 SUCCESSORS AND ASSIGNS

6.2.1 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 without the prior written consent of the other, nor shall the Contractor assign any sums due or to become due to him hereunder, without the prior written consent of the City.

### 6.3 NOTICES

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

### 6.4 RIGHTS AND REMEDIES

6.4.1 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.

### 6.5 ROYALTIES AND PATENTS

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

### 6.6 TESTS AND INSPECTION

6.6.1 The Contractor shall bear all costs of any inspections, tests, or approvals required under any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction.

6.6.2 The City may perform special testing and inspection to verify the Work is performed in accordance with the Contract. The City will provide the Contractor with a listing of tests and inspections to be performed and approximate locations or frequency. The Contractor will be required to notify the City forty-eight hours prior to the time the Contractor will be ready for specific tests or inspection required by the City. If such special testing or inspection reveals failure of the Work to comply (1) with the requirements of the Contract Documents, or (2) with respect to the performance of the Work, with laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, the Contractor shall bear the cost of the City's inspection and retesting and such cost shall be deducted then or thereafter due Contractor. In all other cases, the City shall bear such costs. Any material or workmanship which the City determines does not meet requirements of the Contract Documents will be rejected. At the direction of the City, the Contractor shall remove and replace the rejected material with acceptable material at no cost to the City.

6.6.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by tests, inspections or approvals required or performed by persons or entities other than the Contractor, or by activities or duties of the City's Architect in the Architect's administration of the Contract. The Contractor waives any rights, claims, or causes of action against City as a result of activities or duties of the City's Architect in the Architect's administration of the Contract or representations made by the Architect in the Plans and Specs. The Contractor acknowledges any such rights, claims, or causes of action accrue against the Architect and Contractor may see redress from Architect in the event that becomes necessary.

6.6.4 When the Contractor has completed all Work, the City shall make a final inspection to determine conformity to the Contract Documents. The Contractor shall provide, at the Contractor's sole expense, all equipment and assistance necessary for such final inspection, including all tests specified herein or required by law. All cost for providing such equipment and assistance shall be included in the bid submitted and no additional payment therefor will be made by the City.

## **ARTICLE 7 TIME**

### **7.1 DEFINITIONS**

7.1.1 The Contract Time is the period of time allotted in the Contract Documents for completion of the Work. Said work shall include all punchlist items deemed necessary by the City, exclusive of punchlist items generated by any public authority having jurisdiction other than the City. The date of completion of the Contract shall be the date when all Work including City punchlist items have been approved in writing by the City.

7.1.2 The date of commencement of the Work is the date established in the written Notice to Proceed from the City to the Contractor.

7.1.3 The term "day" as used in the Contract Documents shall mean calendar day.

7.1.4 The term "Punch List" means, collectively, unfinished items of the construction of the Project, which unfinished items of construction are minor or insubstantial details of construction, mechanical adjustment or decoration remaining to be performed, the non-completion of which would not materially affect the use of the Project, and which are capable of being completed within thirty (30) days of Substantial Completion, subject to the availability of special order parts and materials.

### **7.2 PROGRESS AND COMPLETION**

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

7.2.2 The Contractor shall begin the Work on the date of commencement provided in the City-Contractor Agreement. The Contractor shall carry the Work forward expeditiously with adequate forces and shall

complete it within the Contract Time and in accordance with the Construction Schedule. If Contractor's Work shall fall behind schedule for reasons that are not excused under the terms of the Contract, Contractor shall add additional workers or shifts, and/or work overtime as necessary to maintain the Construction Schedule.

7.2.3 The Contractor shall not knowingly, except by agreement or instruction of the City in writing, prematurely commence operations on the Site or elsewhere prior to the effective date of insurance required by Article 10 to be furnished by the Contractor and City, or prior to approval of Performance and Payment Bonds, Certificates of Insurance, and Additional Insured Endorsement and Notice of Cancellation Endorsement required to be submitted to City under the Contract. The date of commencement of the Work shall not be changed by the effective date of such insurance.

7.2.4 The Contractor must conform to the most recently approved Construction Schedule. The Contractor must complete the indicated Work or achieve the required percentage of completion, as applicable, within any interim completion dates established in the most recently approved Construction Schedule.

7.2.5 The Contractor must maintain at the Site, available to the City and the City's Engineer and/or other representatives for their reference during the progress of the Work, a copy of the approved Construction Schedule and any approved revisions thereto. The Contractor must keep current records of and mark on a copy of the approved Construction Schedule the actual commencement date, progress, and completion date of each scheduled activity indicated on the Construction Schedule.

7.2.6 The Contractor represents that its bid includes all costs, overhead and profit which may be incurred throughout the Contract Time and the period between Substantial and final Completion. Accordingly, the Contractor may not make any claim for any increased monetary compensation or delay damages based in whole or in part on the premise that the Contractor would have completed the Work prior to the expiration of the Contract Time but for any claimed delay.

7.2.7 If the Contractor's progress is not maintained in accordance with the approved Construction Schedule, or the City determines that the Contractor is not diligently proceeding with the Work or has evidence reasonably indicating that the Contractor will not be able to conform to the most recently approved Construction Schedule, the Contractor must, promptly and at no additional cost to the City, take all measures necessary to accelerate its progress to overcome the delay and ensure that there will be no further delay in the progress of the Work and notify the City.

7.2.8 The City reserves the right to issue a written directive to accelerate the Work that may be subject to an appropriate adjustment, if any, in the Contract Sum. If the City requires an acceleration of the Construction Schedule and no adjustment is made in the Contract Sum, or if the Contractor disagrees with any adjustment made, the Contractor must file a written claim within ten (10) days or the same will be deemed to be conclusively waived.

### 7.3 HOURS OF WORK

7.3.1 The Contractor shall not perform any work nor move any equipment except between 7:00 A.M. and 8:00 P.M. Monday through Thursday, and between 7:00 A.M. and 5:00 P.M. Fridays (except specified holidays) without the written consent of the City. No work shall be done on Saturday, Sunday, or City holidays, unless approved by the City in advance.

### 7.4 DELAYS, EXTENSIONS OF TIME

7.4.1 Should the Contractor be delayed at any time during the execution of the Work by changes in the scope of work, or by strikes, lockouts, fire, unusual transportation delays, unavoidable casualties, or other delay beyond the control of and not reasonably foreseeable by the Contractor and such delay is approved by the City, the time for completion shall be extended for a period commensurate with the period of the delay. Excusable delays do not include any delays caused in whole or in part by any Subcontractors, Sub-subcontractors or suppliers; rather, are delays caused by conditions which could not reasonably be

anticipated by, are beyond the control of, and are without the fault or negligence of the Contractor or anyone for whose acts the Contractor is responsible.

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

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

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

7.4.5 In the event that the Contractor is delayed in the performance of the Project for any reason whatsoever, including but not limited to action or inaction of the City, another contractor, or subcontractor, the Contractor shall not be entitled to any increase in monetary compensation or damages from the City for such delay; the Contractor's sole remedy shall be to timely request an extension of time.

## 7.5 LIQUIDATED DAMAGES FOR FAILURE OR DELAY IN COMPLETING WORK ON TIME

7.5.1 As stated, the time for the completion of the work is specified, and it is an essential part of the Contract. Therefore, important that the work be pressed vigorously to completion. Should the Contractor or in cause of default, the surety fail, to complete the work within the time specified in the Contract, or within such extra time as may be allowed in the manner set out in the preceding sections, a deduction from the amount set out in the Proposal form will be made for each and every calendar day that such Contractor remains uncompleted after the time allowed for the completion as well as a one-time deduction for the first day of delay as set forth in the City-Contractor Agreement (paragraph 10). Permitting the Contractor to continue and finish the work or any part of it after the expiration of the specified time, or after any extension of the time, shall in no way operate as a waiver on the part of the City or any of its rights under the Contract. When extra or additional work is ordered by the City by a Construction Directive, the Contractor will be allowed an extension of Contract time based upon the ratio cost of such additional work bears to the Contract price unless it can definitely be established that the extra work was of such character that it required more time than is indicated by the money value. In such cases, the reasonable time required may be allowed. The Contractor shall be liable for liquidated damages chargeable under the Contract when the work is being completed by the City by reason of default of the Contract unless the delay is due to the negligence of the City. A delay in any part of the work or in the final completion of the project caused by the City or its agents shall not void the provisions of the Contract as to liquidated damages and, as stated in Section 7.4.5, above, the Contractor shall not be entitled to any damages from the City for such delay, but shall have the sole remedy of an extension of time.

## ARTICLE 8 PAYMENTS AND COMPLETION

### 8.1 CONTRACT SUM

8.1.1 The Contract Sum is stated in the City-Contractor Agreement and is the total amount payable by the City to the Contractor for the performance of the Work.

### 8.2 APPLICATION FOR PAYMENT

8.2.1 The Contractor shall submit requests for payment not more than once monthly. By 12:00 P.M. on or before the twentieth of the month, upon substantial completion of various stages of the Work, and upon final completion of the Work, the Contractor shall submit to the City an itemized Application for Payment pursuant to the City-Contractor Agreement. The form of Application for Payment must be AIA Document G702, Application and Certificate for Payment, supported by AIA Document G703, Continuation Sheet (latest edition), or such other form as may be prescribed by the City. The application must be notarized and supported by sufficient data to demonstrate the Contractor's right to payment and compliance with the payment provisions of the Contract to the satisfaction of the City and its Architect, such as copies of requisitions from Subcontractors and material suppliers, partial lien waivers, releases and other documents.



Each Application for Payment must reflect approved Contract Modifications and the Contract retainage provided for in the Contract Documents.

8.2.2 If payments are to be made on account of materials or equipment to be incorporated into the Work and delivered and suitably stored at the site, such payments shall be conditioned upon submission by the Contractor of bills of sale, waiver of liens, or such other documents satisfactory to the City to establish the City's title to such materials or equipment or to otherwise protect the City's interest. The City has no obligation or responsibility to pay for materials stored off the Site. If specifically approved in writing in advance by the City, an Application for Payment may include materials and equipment stored off-Site at a location agreed upon in writing. Payment for materials and equipment stored on or off the Site is conditioned upon compliance by the Contractor with procedures satisfactory to the City to protect the City's interests. Payment for materials and equipment stored off the Site will, in addition, be conditioned upon the Contractor's provision of applicable insurance, storage and transportation to the Site.

8.2.3 By submitting an Application for Payment, the Contractor warrants and guarantees that title to all Work, materials and equipment covered by such Application for Payment, whether incorporated into the Work or not, will pass to the City upon the receipt of such payment by the Contractor, free and clear of all liens, claims, security interests or encumbrances (hereinafter referred to as "liens").

### **8.3 PAYMENT**

8.3.1 If the Contractor has made Application for Payment as above, the City will make payment to the Contractor for such amount as it determines to be properly due pursuant to the Contractor's Application for Payment, or state in writing the City's reasons for withholding all or any portion of such payment. If the Contract Sum exceeds fifty thousand dollars (\$50,000), five percent (5%) of the amount of each monthly request for payment shall be withheld until after completion by the Contractor and acceptance by the City of all Work.

8.3.2 If the Contract Sum does not exceed \$50,000, and thus a payment bond is not required, the City may retain ten percent (10%) of each monthly request for payment to ensure performance of the Contract.

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

### **8.4 SUBSTANTIAL COMPLETION**

8.4.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

8.4.2 When the Contractor considers that the Work, or a portion thereof which the City agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment ("Punch List"). Failure to include an item on the Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

8.4.3 Upon receipt of the Contractor's Punch List, the City will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the City's inspection discloses any item, whether or not included on the Contractor's Punch List, which is not sufficiently complete in accordance with the Contract Documents so that the City can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the City. In such case, the Contractor shall then submit to the City a request for another inspection to determine Substantial Completion.

### **8.5 COMPLETION AND FINAL PAYMENT**

8.5.1 When the Contractor has completed or corrected all items on the final Punch List and considers that the Work is complete and ready for final acceptance, the Contractor must give written notice to the City and request a final inspection of the Work. The Contractor's notice and request for a final inspection must be accompanied by a final Application for Payment and the Submittals required by Section 8.5.3.

8.5.2 Upon receipt of the Contractor's notice and request for final inspection, the City will promptly make such inspection and, when the City concurs that the Work has been fully completed and is acceptable under the Contract Documents, the City's Architect will issue a Certificate of Final Completion to the City. The Contractor's notice and request for final inspection constitutes a representation by the Contractor to the City that the Work has been completed in full and strict accordance with terms and conditions of the Contract Documents. The Contractor will be promptly notified if the City does not concur that the Work is finally complete. In such case, the Contractor must bear the cost of any additional services of the City until the Work is determined to be finally complete.

8.5.3 Neither final payment nor any remaining retained percentage will become due until the Contractor submits the following documents to the City:

1. An Affidavit that all payrolls, bills for materials and equipment, and other indebtedness incurred in connection with the execution and completion of the Work for which the City or its property might in any way be responsible, have been paid or otherwise satisfied;
2. Consent of the surety, if applicable, to final payment;
3. An affidavit stating the Contractor has fully complied with the provisions and requirements of the Prevailing Wage Law, Section 290.210 through 290.340 RSMo., as amended; and
4. If required by the City, other data establishing payment or satisfaction of all such obligations, such as receipts and releases arising out of the Contract, to the extent and in such form as may be designated by the City.

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

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

## 8.6 PARTIAL OCCUPANCY OR USE

8.6.1 The City may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Article 10 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the City and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, or reduction in liquidated damages, if appropriate, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the City as provided under Section 8.5.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the City and Contractor or, if no agreement is reached, by decision of the City's Architect.

## ARTICLE 9 PROTECTION OF PERSONS AND PROPERTY

### 9.1 SAFETY PRECAUTIONS AND PROGRAMS



9.1.1 The Contractor shall initiate, maintain, and supervise safety precautions and programs in connection with the performance of the Work.

## 9.2 SAFETY OF PERSONS AND PROPERTY

9.2.1 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, 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, sprinkler systems, structures, and utilities not designated for removal, relocation or replacement in the course of construction.

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

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

9.2.4 All damage or loss to any property caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by anyone for whose acts they may be liable, shall be remedied by the Contractor. The City shall document any complaint by any person regarding damage or loss to property caused by Contractor by requesting such complainant to complete a Damage Claim form. A copy of the Damage Claim form shall be submitted by the City to the Contractor and the Contractor shall correct the problem, repair such damage or otherwise compensate the complainant or file a claim for such damage with Contractor's insurance company within ten (10) days of the receipt of the Damage Claim form from the City. If the City shall have a legitimate basis for believing that such claim is valid, the City shall have the option to withhold payment of funds until (i) such damages are repaired; or (ii) the City has been provided with evidence that that Contractor has made restitution to the complainant.

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

9.2.6 The Contractor must implement and maintain, as required by the Contract Documents, applicable laws and regulations and orders of public authorities having jurisdiction (without limitation OSHA and the Missouri Department of Labor and Industrial Relations), manufacturers' instructions or recommendations, existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including issuing appropriate notices, distributing material safety data sheets and other hazard communication information, providing protective clothing and equipment, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

## ARTICLE 10 INSURANCE

## 10.1 CONTRACTOR'S LIABILITY INSURANCE

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

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

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

10.1.4 If the scope or extent of the City's tort liability as a governmental entity as described in Section 537.600 through 537.650 R.S.Mo. is broadened or increased during the term of this agreement by the Missouri Department of Insurance through its annual calculation (published in the Missouri Register and at <http://insurance.mo.gov/industry/sovimmunity.php>) or by legislative or judicial action, the City may require Contractor, upon 10 days written notice, to execute a contract addendum whereby the Contractor agrees to provide, at a price not exceeding Contractor's actual increased premium cost, additional liability insurance coverage as the City may require to protect the City from increased tort liability exposure as the result of such legislative or judicial action. Any such additional insurance coverage shall be evidenced by an appropriate certificate of insurance and shall take effect within the time set forth in the addendum.

## 10.2 PROPERTY INSURANCE

10.2.1 Unless otherwise provided, the City will maintain property insurance (Builder's Risk Insurance) upon the Work but the Contractor shall be responsible for the payment of any deductible that the City is required to pay pursuant to the filing of any claim thereunder.

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

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

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

10.2.5 The City and Contractor waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance provided under this Paragraph 10.2 and the Contract Documents, City-Contractor Agreement, except such rights as they may have to the proceeds of such insurance held by the City as trustee. The Contractor shall require similar waivers by Subcontractors and Sub-subcontractors in accordance with Paragraph 4.3.1 hereof.

## 10.3 ALL-RISK BUILDERS RISK INSURANCE

10.3.1 Unless specifically authorized by the City, the amount of such insurance shall not be less than the total contract price. The policy shall name as insured the Contractor and the City.

#### 10.4 PERFORMANCE BOND AND PAYMENT BOND

10.4.1 The City shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. The bonds shall be issued by a United States Department of Treasury listed corporate surety, and Missouri Department of Insurance registered entity, accompanied by current powers of attorney, on a form acceptable to Owner.

### ARTICLE 11 CHANGES IN THE WORK

#### 11.1 CHANGE ORDERS

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

11.1.2 A Change Order is a written order to the Contractor prepared by the City's Architect or other representative, signed by the City and Contractor, issued after the execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Construction Schedule. The Contract Sum and the Contract Time may be changed only by Change Order. The Contractor shall make all requests for a Change Order on forms provided by the City upon written request to the City.

11.1.3 *Change Proposals.* The Contractor must submit change proposals covering a contemplated Change Order within ten (10) days after request of the City or within ten (10) days of the event giving rise to the Contractor's claim for a change in the Contract Sum or Contract Time. No increase in the Contract Sum or extension of the Contract Time will be allowed the Contractor for the cost or time involved in making change proposals. Change proposals will define or confirm in detail the Work which is proposed to be added, deleted, or changed and must include any adjustment which the Contractor believes to be necessary in (i) the Contract Sum, or (ii) the Contract Time. Any proposed adjustment must include detailed documentation including but not limited to: cost, properly itemized and supported by sufficient substantiating data to permit evaluation including cost of labor, materials, supplies and equipment, rental cost of machinery and equipment, additional bond cost, plus a fixed fee for profit and overhead (which includes office overhead and site-specific overhead and general conditions) of ten percent (10%) if the Work is performed by the Contractor, or five percent (5%) if the Work is performed by a Subcontractor or Sub-subcontractor. The Subcontractors or Sub-subcontractors overhead and profit in turn must not exceed a total aggregate of ten percent (10%). Change proposals will be binding upon the Contractor and may be accepted or rejected by the City in its discretion. The City may, at its option, instruct the Contractor to proceed with the Work involved in the change proposal in accordance with this Section 11.1.3 without accepting the change proposal in its entirety. Failure to give proper notice or to give notice prior to performing the work shall waive and void Contractor's change proposal.

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

#### 11.2 CONSTRUCTION DIRECTIVES

11.2.1 A Construction Directive is a written order prepared by the City's Architect and signed by the City (or its representative after having been approved in writing by the City), directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The City may by Construction Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

11.2.3 If the Construction Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

1. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
2. Unit prices stated in the Contract Documents or subsequently agreed upon;
3. Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
4. As provided in Section 11.2.7.

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

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

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

11.2.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the City shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, the Contractor shall keep and present, in such form as the City may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 11.3.7 shall be limited to the following:

1. Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
2. Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
3. Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
4. Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
5. Additional costs of supervision and field office personnel directly attributable to the change.

11.2.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the City. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

11.2.9 Pending final determination of the total cost of a Construction Directive to the City, the Contractor may request payment for Work completed under the Construction Directive in Applications for Payment. The City's Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order.

11.2.10 When the City and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Directive.

### 11.3 MINOR CHANGES IN THE WORK

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

### 11.4 CHANGES IN EXCAVATION WORK

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

### 11.5 OVERHEAD AND PROFIT FROM CHANGES IN THE WORK

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

1. For the Contractor, for Work performed by the Contractor's own forces, ten (10) percent of the cost.
2. For the Contractor, for Work performed by the Contractor's Subcontractors, five (5) percent of the amount due the Subcontractors.
3. For the Subcontractor involved, for Work performed by that Subcontractors own forces, ten (10) percent of the cost.
4. For each Subcontractor involved, for Work performed by the Subcontractor's Sub-subcontractors, five (5) percent of the amount due the Sub-subcontractor.
5. In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials, and Subcontracts. Where major cost items are Subcontracts, they shall be itemized also.

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### 12.1 UNCOVERING OF WORK

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

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

## 12.2 CORRECTION OF WORK

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

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

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

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

12.2.5 In the alternative to Section 12.2.2, if the Contractor fails to correct such defective or non-conforming Work, the City may correct it in accordance with Paragraph 2.4 hereof.

## 12.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

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

# ARTICLE 13 SPECIAL PROVISIONS

## 13.1 SCHEDULING OF WORK AND PROTECTION OF THE PUBLIC

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

13.1.2 Suitable temporary barriers shall be provided to protect the public from the Work if necessary. At all times until final acceptance of the Work, the Contractor shall provide and maintain such signs, lights, barriers, cones, watchmen or flaggers as may be necessary to properly protect the Work and provide for safe and convenient public travel.

13.1.3 In the case of open excavations or other potentially hazardous conditions existing during non-working periods, the public will be protected and advised by signs, fencing and barricades. Parking of

equipment or storage of materials on or near the Project site will be permitted only if adequate protective devices are provided and then only for the minimum time required for any specific job.

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

### 13.2 ACCESS

13.2.1 The Work shall be constructed so that, except where shown on the plans, all areas of the park and parking lot shall be remain accessible so that at no time, other than temporarily, will access be denied.

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

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

### 13.3 CONSTRUCTION STAKING AND LAYOUT

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

### 13.4 OVERTIME

13.4.1 In order to provide sufficient control of work, the Contractor shall be required to inform the City of schedules of overtime work, including work on Saturdays, Sundays, and City holidays as given below at least forty-eight (48) hours in advance of any such work. If the Contractor fails to appear on a scheduled overtime period, the City shall deduct the cost for the City's assigned personnel from the Contract Sum for the time period schedule.

13.4.2 There are ten (10) holidays. They are:

- New Year's Day
- Martin Luther King Jr. Day
- President's Day
- Memorial Day
- Fourth of July
- Labor Day
- Thanksgiving Day
- Day after Thanksgiving
- Christmas Eve (1/2 day)
- Christmas Day
- New Year's Eve (1/2 day)

### 13.5 INTERFERENCE WITH EXISTING WATER AND SEWER SERVICES AND MAINS

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

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

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

### 13.6 COORDINATION WITH UTILITIES

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

### 13.7 PRECONSTRUCTION CONFERENCE

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

### 13.8 SEQUENCE OF WORK

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

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

### 13.9 CONSTRUCTION LIMITS

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

### 13.10 ALTERED QUANTITIES

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

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

### 13.11 MEASUREMENT OF QUANTITIES-UNIT PRICE CONTRACTS



13.11.1 Generally. For unit price contracts, unless otherwise directed within the Technical Specifications, the quantities for which payment will be made shall be those shown in the Contract for the various items, provided the project is constructed as shown on the plans. Contract quantities will be used for final payment except when:

- a) Errors are formed in the original computations in excess of 15% of the contract quantities.
- b) An original cross section is found to have an average deviation from the true elevation in excess of one foot.
- c) An authorized change in grade, slope or typical section is made.
- d) Unauthorized deviations decrease the quantities on the plans.

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

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

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

13.11.3 Additions to Contract. Unit prices in this Contract may be used to negotiate a Change Order for additional work involving similar projects.

## 13.12 PURCHASE OF MATERIALS AND EQUIPMENT

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

a) City shall furnish the Contractor a "Project Tax Exemption Certificate" which shall include the following:

1. City's name, address, Missouri tax identification number, and signature of authorized representative;
2. The project location, description, and unique identification number;
3. The date the City-Contractor Agreement is entered into, which is the earliest date materials may be purchased for the project on a tax-exempt basis;
4. The estimated date of completion for the Project;
5. The Tax Exemption Certificate expiration date. Such certificate is renewable for a given project at the option of the City, only for the purpose of revising the certificate expiration date as necessary to complete the Project.

b) Contractor shall:

1. Furnish the Project Tax Exemption Certificate to all subcontractors and agrees to bind all Subcontractors of any tier to the obligation to present and use the Tax Exemption Certificate and pass all savings to the City. The Contractor will require all Subcontractors and bidders to provide cost information for materials separate from other costs for labor, profit, overhead, etc. to allow the City to verify that no taxes are to be paid on material procurement and that such savings shall be passed on to the City. The Contractor will maintain all records, invoices, receipts, or other accounting data regarding material purchases and will allow, upon written request of the City and within a reasonable time frame after receipt of such request, the City to audit such records to verify tax savings. If an audit reveals taxes paid or savings not transferred to the City, the Contractor will be liable to the City for those amounts and the City may backcharge the Contractor for those amounts if a balance of funds due and payable remains at the time of such discover. The Contractor and any subcontractor purchasing materials shall present, on behalf of the City, all tangible personal property and materials to be incorporated into or consumed in the construction of the Project and no other on a tax-exempt basis. Suppliers shall execute to the purchasing Contractor or Subcontractor invoices made out to the Contractor. The invoices must also bear the name of the City and the project identification number. Nothing in this section shall be deemed to exempt the purchase of any construction machinery, equipment, or tools used in constructing, repairing or remodeling facilities for the City. All invoices for all personal property and materials purchased for the Project utilizing the Project Tax Exemption Certificate shall be retained by the purchasing Contractor or subcontractor for a period of five (5) years and shall be subject to audit by the Missouri Director of Revenue.

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

2. Require all Subcontractors of any tier maintain all records, invoices, receipts, or other accounting data regarding material purchases. The Contractor will collect such records with each application for payment it receives from its Subcontractors and shall maintain such records in the same manner and location as the Contractor's records.

3. Ensure its Subcontractors and any lower-tier Subcontractors include these obligations in their contracts and bind themselves in the same manner as Contractor is bound to the City.

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

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

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

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

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

- a) This section shall not apply when:
- 1) The purchase, lease, or contract involves an expenditure of less than twenty-five thousand dollars;
  - 2) Only one line of a particular good or product is manufactured or produced in the United States;
  - 3) The specified products are not manufactured or produced in the United States in sufficient quantities to meet the City's requirements or cannot be manufactured or produced in the United States within the necessary time in sufficient quantities to meet the City's requirements;
  - 4) Obtaining the specified products manufactured or produced in the United States would increase the cost of the contract by more than ten percent.
- b) If this section shall not apply because of the circumstance described in paragraphs (a)(3)-(4), then the Contractor shall provide the City with the information necessary to make the certifications required under Section 34.353 RSMo.

### **13.13 CONTROL OF MATERIAL**

13.13.1 All tickets will be collected to verify the quantity of each item in their original form only. Xerox or fax copies will not be accepted. All tickets shall be submitted on the day of delivery, either to the City personnel or the Public Works office at City Hall, or they will not be accepted for payment.

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

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

### **13.14 NO RIGHT TO STOP WORK FOR NON-PAYMENT**

13.14.1 The Contractor has no right to stop Work as a consequence of non-payment. In the event of any disagreement between the Contractor and City involving the Contractor's entitlement to payment, the Contractor's only remedy is to file a claim. The Contractor must diligently proceed with the Work pending resolution of the claim. If, however, an Application for Payment has been approved for payment by the City, and the City fails to make payment within sixty (60) days of the approval for payment by the City, the Contractor may upon ten (10) days written notice to the City, stop work if payment is not made by the City within ten (10) days following the notice.

## **ARTICLE 14 TERMINATION PROVISIONS**

### **14.1 TERMINATION BY THE CITY FOR CAUSE**

14.1.1 In addition to all other remedies available to the City, the City may terminate the Contract if the Contractor:

1. Refuses or fails to supply enough properly skilled workers or proper materials;
2. Fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
3. Disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
4. Otherwise is guilty of substantial breach of a provision of the Contract Documents.

14.1.2 When any of the above reasons exists, the City may without prejudice to any other rights or remedies of the City and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior right of the surety:

1. Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
2. Accept assignment of subcontracts; and
3. Finish the Work by whatever reasonable method the City may deem expedient. Upon written request of the Contractor, the City shall furnish to the Contractor a detailed accounting of the costs incurred by the City in finishing the Work.

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

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

## 14.2 TERMINATION BY THE CITY FOR CONVENIENCE

14.2.1 The City may, at any time, terminate the Contract for the City's convenience and without cause.

14.2.2 Upon receipt of written notice from the City of such termination for the City's convenience, the Contractor shall:

1. Cease operations as directed by the City in the notice;
2. Take actions necessary, or that the City may direct, for the protection and preservation of the Work; and
3. Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

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