

CONTRACT
and
RELATED DOCUMENTS
for
Rolla Fitness Trail Improvements
IN
BER JUAN PARK, ROLLA, MISSOURI
PROJECT NUMBER
P11507056400.3
Prepared by
City of Rolla
Parks and Recreation Department
901 N. Elm
Rolla, Missouri

NOTICE TO BIDDERS

The City of Rolla hereby requests bids for the following: **Rolla Fitness Trail Improvements Project**. Bids will be accepted until Wednesday, 29, 2026 at 11 a.m. in the office of the City Clerk, 3rd Floor, 901 North Elm Street, Rolla, Missouri, at which time they will be opened. Bids shall be submitted in a sealed envelope and clearly marked “**ROLLA FITNESS TRAIL IMPROVEMENTS PROJECT P11507056400.3.**”

The City of Rolla hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, businesses owned and controlled by socially and economically disadvantaged individuals will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, religion, creed, sex, age, ancestry or national origin in consideration for an award. Federal Land and Water Conservation Funds are being used in this project, and all relevant federal, state, and local requirements apply.

The project will consist of installing signs and exercise apparatus for replacing existing fitness trail apparatus along the Acorn Trail in Ber Juan Park. An itemized breakout of scope of work can be found in these specifications.

An optional pre-bid meeting will be 11 a.m. Wednesday, April 22, 2026, in Ber Juan Park at the parking lot for the tennis courts.

Contractor shall be responsible for all necessary city, state and federal statutes, rules and regulations. The required documentation for such, along with the contract agreement, will be provided once the successful proposal has been determined.

No bidder may withdraw their bid within 60 days after the actual date of the opening of their bid.

All bids shall include the proposal form provided. Any bids not conforming to the specifications will be rejected.

The City reserves the right to reject any and all proposals for any sound documented reason and to ask for modifications or changes of all contractors throughout the process.

All proposals shall meet or exceed specifications.

Successful contractor will be required to have the appropriate City of Rolla business license. All questions regarding plans or specifications must be directed to the Parks and Recreation Department.

The contractor further understands and agrees that if this Proposal is accepted they shall furnish all of the materials specified in the contract, except such materials and/or work to be furnished by the City, in the manner and at the time therein prescribed, and in accordance with the requirements therein set forth.

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

The City of Rolla is an equal opportunity employer. Minority Business, Small Business, and Women Owned Business are encouraged to apply.

IMPORTANT - Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in Missouri.

TABLE OF CONTENTS

Notice to Bidders	2
Instructions to Bidders.....	7
Information for Bidders.....	8
I. Contract Documents	8
II. Bidder’s Obligation	8
III. Document Interpretation	8
IV. Proposals	8
V. Modification and Withdrawal of Bids	9
VI. Signing of Proposals.....	10
VII. Award of Contract	10
VIII. Contract Security	10
IX. Number of Construction Documents	10
Proposal.....	11
Scope of Work	14
General Conditions	16
Contract Documents	16
1.1 Definition.....	16
1.1.1 The Contract Documents.....	16
1.1.2 The Contract.....	16
1.1.3 The Work.....	16
1.1.4 The Project.....	16
1.2 Execution, Correlation and Intent.....	16
1.3 Ownership and Use of Documents	17
Parks and Recreation Director	17
2.1 Definition.....	17
2.2 Administration of the Contract.....	17
City.....	20
3.1 Definition.....	20
3.2 Information and Services Required of the Owner	20
3.3 City’s Right to Stop the Work	20
3.4 City’s Right to Carry Out the Work.....	21
Contractor.....	21
4.1 Definition.....	21
4.2 Review of Contract Documents.....	21
4.3 Supervision and Construction Procedures	21
4.4 Before Final Payment-Required Final Forms Completion.....	22
4.5 Labor and Materials.....	22

4.6	Warranty	22
4.7	Taxes.....	22
4.8	Permits, Fees and Notices.....	23
4.9	Allowances	23
4.10	Superintendent.....	24
4.11	Progress Schedule	24
4.12	Documents and Samples at the Site.....	24
4.13	Shop Drawings, Product Data and Samples.....	24
4.14	Use of Site.....	25
4.15	Cutting and Patching of Work.....	25
4.16	Cleaning Up.....	25
4.17	Communications	26
4.18	Royalties and Patents.....	26
4.19	Indemnification	26
Subcontractors.....		27
5.1	Definition.....	27
5.2	Award of Subcontractors and Other Contracts for Portions of the Work.....	27
5.3	Subcontractual Relations.....	28
Work by City or by Separate Contractors		28
6.1	City's Right to Perform Work and to Award Separate Contracts	28
6.2	Mutual Responsibility.....	28
6.3	City's Right to Clean Up	29
Miscellaneous Provisions.....		29
7.1	Governing Law.....	29
7.2	Successors and Assigns.....	29
7.3	Written Notice	30
7.4	Claims for Damage	30
7.5	Performance Bond and Labor and Material Payment Bond	30
7.6	Rights and Remedies.....	30
7.7	Tests.....	30
7.8	Interest	31
7.9	Arbitration.....	31
Time.....		32
8.0	Scope of Work Page No. 22 Specifies 60 Calendar Days	32
8.1	Definitions.....	32
8.2	Progress and Completion	32
8.3	Delays and Extensions of Time	32
Payments and Completion		33
9.1	Contract Sum	33
9.2	Schedule of Values	33
9.3	Applications for Payment.....	33
9.4	Certificates for Payment.....	34

9.5	Progress Payments	34
9.6	Payments Withheld	35
9.7	Failure of Payment	35
9.8	Substantial Completion	36
9.9	Final Completion and Final Payment	36
Protection of Persons and Property		37
10.1	Safety Precautions and Programs	37
10.2	Safety of Persons and Property	38
10.3	Emergencies	39
10.4	Occupational Safety and Health Administration (OSHA)	39
10.5	Missouri Revised Statutes	39
Insurance		42
11.1	Contractor's Liability Insurance	42
11.2	City's Liability Insurance	42
11.3	Contractor's Builders' Risk Insurance	43
Changes in the Work		43
12.1	Change Orders	43
12.2	Concealed Conditions	44
12.3	Claims for Additional Cost	44
12.4	Minor Changes in the Work	44
Uncovering and Correction of Work		45
13.1	Uncovering of Work	45
13.2	Correction of Work	45
13.3	Acceptance of Defective or Non-Conforming Work	46
Termination of the Contract		46
14.1	Termination of the Contract	46
14.2	Termination by the City	47
Supplemental General Conditions		47
15.1	Certificate of Owner's Attorney	47
15.2	Conflict of Interest	47
15.3	Procurement of Recovered Materials	48
15.4	Clean Air Act	48
Special Conditions		49
1.1	Insurance	49
1.2	Workers' Compensation Insurance	49
1.3	Public Liability and Property Damage Insurance	49
2.1	Time for Completion	51
3.1	Liquidated Damages	51
4.1	Special Wage Determination	51

5.1	Nondiscrimination in Employment	51
6.1	Payments	52
7.1	Hold Harmless Agreement	52
8.1	Affidavit Compliance with the Prevailing Wage Law	52
9.1	Contractors' Affidavit Regarding Settlement of Claims	53
10.1	Build America, Buy America	53
10.2	Bipartisan Infrastructure Law	53
11.0	Business Registered to Do Business	53
12.0	Anti-Discrimination Against Israel Act	53

INSTRUCTIONS TO BIDDERS

1. Bids must be submitted with the “Bidder’s Proposal” form. Bids must be submitted in a sealed envelope, properly identified with the project name and number. Attached to the Bid Proposal shall be any applicable information or specification sheets, properly filled out, for the items bid.
2. The Bid must be filed with the City Clerk prior to the announced bid opening date and time.
3. The City of Rolla reserves the right to accept or reject any and/or all bids.
4. It will be the City’s intent to award to the lowest responsible and responsive contractors or suppliers who have the ability to perform successfully under the terms and conditions of the contract.
5. All bids shall meet or exceed specifications.
6. Any exceptions to these terms or conditions or deviations from written specifications shall be shown in writing and attached to the Bidder’s Proposal. Deviations must be specifically agreed to in writing by the City or they will not be accepted.
7. Bidders are cautioned to verify their proposal before submission as requests for amendments, withdrawals or proposals, if received by the City after the time specified for opening, will not be considered.
8. Successful bidder, once notified of their bid acceptance, will be required to have the appropriate City of Rolla business license.
9. All questions regarding plans or specifications must be directed to the Parks and Recreation Department no later than 72 hours prior to time for receipt for proposals. Addendums will be provided to all bidders.
10. Bids should include:
 - a description of your company’s qualifications and relevant, current experience;
 - A minimum of three references of other Missouri cities and comparable projects completed.
 - An itemized list of all materials included in the bids.

INFORMATION FOR BIDDERS

I. CONTRACT DOCUMENTS

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

II. BIDDER'S OBLIGATION

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

III. DOCUMENT INTERPRETATION

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

IV. PROPOSALS

- A. Proposals will be received for the construction of "ROLLA FITNESS TRAIL IMPROVEMENTS, PROJECT 11507056400.3."

- B. All work is to be done as defined in specifications.
- C. Proposals are to be presented in sealed envelopes which are to be plainly marked: **“ROLLA FITNESS TRAIL IMPROVEMENTS, PROJECT P11507056400.3”** and mailed or delivered to the place specified in the Advertisement for Bids. Bidders shall be responsible for actual delivery of proposals during business hours, and it shall not be sufficient to show that a proposal was mailed in time to be received before scheduled closing time for receipt of proposal.
- C. Bidder’s proposal shall include all city, state and federal sales, excise and similar taxes which may be lawfully assessed and all permits, governmental fees and licenses in connection with his performance of work and purchase of materials to be incorporated in the work.
- D. No bidder shall stipulate in his proposal any conditions not contained in the proposal form.
- E. The Owner reserves the right to waive informalities in proposals and to reject any or all proposals.

V. **MODIFICATION AND WITHDRAWAL OF BIDS**

- A. Bidder may withdraw his proposal at any time prior to the scheduled closing time for receipt of proposals, but no bidder may withdraw his proposal for the period of time specified in the Form of Proposal after scheduled closing time for receipt of bids.
- B. In the event any proposal is withdrawn after the scheduled closing time for receipt of proposals or bidder fails or refuses to execute contracts in accordance with a proposal acceptable to the City, or any other proposals submitted by such bidder may be considered by the City to have been withdrawn by such action on the part of the bidder.
- C. Only telegrams, letters, and other written requests for modifications or corrections of previously submitted proposals, which are addressed in the same manner as proposals and are received by the City Clerk prior to scheduled closing time for receipt of proposals, will be accepted and proposal corrected in accordance with such written requests with the following provisions:
 - 1. Provided that any such written request is contained in a sealed envelope which is plainly marked: **“ROLLA FITNESS TRAIL IMPROVEMENTS PROJECT, PROJECT P11507056400.3.”**
 - 2. That in case of telegraphic modification the City is satisfied that written confirmation of such telegraphic modification over the signature of bidder was mailed prior to closing time. If such written confirmation is not received within two days from date of closing time, no consideration shall be given to telegraphic modifications.

VI. SIGNING OF PROPOSALS

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

VII. AWARD OF CONTRACT

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

VIII. CONTRACT SECURITY

- A. Each Bid must be accompanied by a bid bond payable to the owner for five percent (5%) of the total amount of the bid. As soon as the bid prices have been compared, the owner will return the bonds of all except the three lowest responsible bidders. When the agreement is executed the bonds of the two remaining unsuccessful bidders will be returned. The bid bond of the successful bidder will be retained until the payment bond and performance bond have been executed and approved, after which it will be returned. Only a bid bond issued to an acceptable surety company will be accepted with each bid.

IX. NUMBER OF CONSTRUCTION DOCUMENTS

- A. The City will furnish the Contractor a copy of the executed contract.

PROPOSAL FOR
ROLLA FITNESS TRAIL IMPROVEMENTS PROJECT, PROJECT P11507056400.3
FOR
BER JUAN PARK, ROLLA, MISSOURI

Proposal Submitted by: _____

To the City Council, City of Rolla, Missouri:

This proposal is submitted for the Project entitled “ROLLA FITNESS TRAIL IMPROVEMENTS PROJECT P11507056400.3.

The Contract Documents for these improvements are those prepared by the Parks and Recreation Department, City of Rolla, Missouri.

In submitting this proposal, the undersigned declares that the only persons or parties interested in the proposal as principals are those named herein; and that the proposal is made without collusion with any other person, firm, or corporation.

The undersigned further declares that he has carefully examined the proposal, plans and Specifications, and that he has familiarized himself with all of the local conditions affecting the contract and the detailed requirements of construction, and understands that in making this Proposal he waives all right to plead any misunderstanding regarding the same.

The undersigned has by investigation of the site of the work and otherwise satisfied himself as to the nature and location of the work and has fully informed himself as to all conditions and matters that can in any way affect the work or the cost thereof.

The undersigned further understands and agrees that if this Proposal is accepted he is to furnish and provide all necessary machinery, tools, apparatus and other means of construction, and to do all of the work and to furnish all of the materials specified in the contract, except such materials and/or work to be furnished by the City, in the manner and at the time therein prescribed, and in accordance with the requirements therein set forth.

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

EXHIBIT A

CONTRACT AGREEMENT

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

WITNESSETH:

THAT WHEREAS, the Owner has caused to be prepared, in accordance with law, specifications, plans, and other Contract Documents for the work herein described, and has approved and adopted said documents, and has caused to be published and advertised for and in connection with the construction of: **Rolla Fitness Trail Improvements Project**, in complete accord with the Contract Documents and the said plans and specifications; and

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

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

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

ARTICLE I. That the Contractor shall furnish all materials, supplies, and equipment specified and required to be incorporated in, and form a permanent part of the completed work except the items specified to be furnished by the Owner and in conformity with the Contract Plans and Specifications designated and identified therein provide all necessary materials, plans and drawings) and covered by the Owner's official award of this Contract to the said Contractor, such award being based on the acceptance by the Owner of the Contractor's proposal, **Rolla Fitness Trail Improvements.**

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

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

CITY OF ROLLA, MISSOURI

CONTRACTOR

BY _____
Mayor, Owner, Party of the First Part

BY _____

Printed Name

Printed Name/Title

STATE OF MISSOURI)
SS)
County of Phelps)

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

My commission expires: _____

Notary Public

STATE OF MISSOURI)
SS)
County of Phelps)

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

My commission expires: _____

Notary Public

2026 EXERCISE STATIONS

PROJECT NUMBER 1507056400.3

CITY OF ROLLA, MISSOURI

BID FORM

The base bid includes all material and equipment necessary for constructing all improvements as directed at various locations throughout the community and as shown in these specifications. The City defined budget will be the basis of award for base bid and any add alternates for this project. The lowest responsive bidder who can provide the most amount of work for the predetermined budget will be selected. Add alternates will be included for award in the order they are published on the Bid Form. The budget will be disclosed at the public bid opening prior to the opening of any bids for this project. The City reserves the right to waive informalities in proposals and to reject any and all proposals or parts of proposals.

FITNESS TRAIL IMPROVEMENTS,

PROJECT 1507056400.3

BER JUAN PARK,

CITY OF ROLLA, MISSOURI

SCOPE OF WORK AND PROJECT SPECS

Bid price includes all materials and forms necessary for constructing all improvements as shown on the plans and specifications. The proposal to include the following:

> 11 is the minimum number of exercise stations to be replaced, with the appropriate signage for each:

- 1) Achilles tendon stretch
- 2) Bench Leg Raise
- 3) Overhead Ladder Walk
- 4) Standing Long Jump
- 5) Hip Circle
- 6) Parallel Bar Walk
- 7) Bent Knee Sit Up
- 8) Vertical Jump
- 9) Sit and Reach
- 10) Step Up
- 11) Push Up

Add alternate 12: Body Curl

Add alternate 13: Body Lift

Add alternate 14: Log Hop

Add alternate 15: Trunk Twist

Add alternate 16: Chin Up

Add alternate 17: Triple Static Stretch

Add alternate 18: Balance Beam

- > All main upright members must be metal, either 4"x4" square gauge galvanized steel or 4.5" diameter posts. steel tubing or an approved metal equal.
- > Any wood used must be high quality straight grain redwood. Minimum of 2" thickness.
- > All equipment must meet federal safety requirements.
- > All camps must be metal, either galvanized steel or high tensile cast aluminum.
- > Signs must be made of vandalism resistant material – poly carbonate plastic, metal, etc.
- > Sign language must give clear and concise instructions for each station, must also list more than one level of performance and must illustrate proper exercise positions.
- > Must have at least one start-finish sign describing course, principles, and benefits for users.
- > Lifetime warranty on posts, clamps, caps and hardware. Minimum 25-year warranty for main structural parts and any molded components. Minimum 10-year warranty on shade fabric, fiberglass signage and any wood products used. Minimum 5-year warranty on swing seats, HDPE panels, and nylon-covered nets and components. Minimum 1-year warranty on any coil springs and any other products or moving parts not covered in the above. 5YR on paintwork, 2YR on bearings.
- > Structure to meet ADA standards for accessibility
- > All equipment shall comply will all the requirements of CPSC, ASTM, ADA and will be IPEMA certified.
- > The manufacturer of the equipment must carry a minimum of \$5 million of liability insurance per piece for the life of the equipment, with an AM best rating.
- > The manufacturer of the equipment must have a minimum of 10 years experience in manufacturing commercial outdoor exercise equipment.
- > ASTM F3101-21a Standard specification for unsupervised public use outdoor fitness equipment.
- > CPSC Public Playground Safety Handbook, publication 325, updated in 2025.
- > ASTM F3313 fall height for outdoor fitness equipment.
- > All manufactured components must be IPEMA certified (International Playground Equipment Manufacturers Association).

Materials to be delivered on or before 60 Days from award of bid

See Appendix A for approved product listing

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

ARTICLE 1 CONTRACT DOCUMENTS

1.1 DEFINITION

1.1.1 THE CONTRACT DOCUMENTS

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

1.1.2 THE CONTRACT

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

1.1.3 THE WORK

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

1.1.4 THE PROJECT

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

1.2 EXECUTION, CORRELATION AND INTENT

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

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

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

1.2.4 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.3 OWNERSHIP AND USE OF DOCUMENTS

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

ARTICLE 2 PARKS AND RECREATION DIRECTOR

1.1 DEFINITION

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

1.2 ADMINISTRATION OF THE CONTRACT

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

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

1.2.3 The Parks and Recreation Director or his designee(s) will visit the site at intervals appropriate to the stage of construction to monitor the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents. The Parks and

Recreation Director will make on-site inspections to check the quality or quantity of the Work. On the basis of his on-site observations he will endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor.

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

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

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

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

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

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

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

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

1.2.12 Any claim, dispute or other matter in question between the Contractor and the City referred to the Parks and Recreation Director, except those relating to artistic effect as provided

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

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

1.2.14 The Parks and Recreation Director will review and approve or take other appropriate action upon Contractor's submittal such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Parks and Recreation Director's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

1.2.16 The Parks and Recreation Director will conduct inspections to determine the dates of substantial completion and final completion, will receive and forward to the City for the City's review written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of Paragraph 9.9.

1.2.17 The Parks and Recreation Director will provide one or more Project Representatives to assist the Parks and Recreation Director in carrying out his responsibilities at the site. The

duties, responsibilities and limitations of authority of any such Project Representative shall be as set forth in an exhibit to be incorporated in the Contract Documents.

ARTICLE 3 CITY

3.1 DEFINITION

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

3.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

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

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

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

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

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

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

3.3 CITY’S RIGHT TO STOP THE WORK

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

3.4 CITY'S RIGHT TO CARRY OUT THE WORK

3.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven days after receipt of written notice from the City to commence and continue correction of such default or neglect with diligence and promptness, the City may, after seven days following receipt by the Contractor of an additional written notice and without prejudice to any other remedy he may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies including compensation for the Parks and Recreation Director's office additional services made necessary by such default, neglect or failure. Such action by the City and the amount charged to the Contractor are both subject to the prior approval of the Parks and Recreation Director. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the City.

ARTICLE 4 CONTRACTOR

4.1 DEFINITION

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

4.2 REVIEW OF CONTRACT DOCUMENTS

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

4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

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

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

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

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

4.4 BEFORE FINAL PAYMENT-REQUIRED FINAL FORMS COMPLETION

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

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

4.5 LABOR AND MATERIALS

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

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

4.6 WARRANTY

4.6.1 The Contractor warrants to the City and the Parks and Recreation Director that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Parks and Recreation Director, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Paragraph 13.2.

4.7 TAXES

4.7.1 MISSOURI STATE STATUES 144.062, EFFECTIVE AUGUST 28, 1994, ALLOWS FOR A SALES TAX EXEMPTION TO CONTRACTORS CONSTRUCTING, REPAIRING OR REMODELING FACILITIES OR PURCHASING PERSONAL PROPERTY AND MATERIALS TO BE INCORPORATED INTO AND CONSUMED IN THE CONSTRUCTION OF

PROJECTS FOR A TAX EXEMPTION ENTITY. THE TAX ENTITY SHALL FURNISH A SIGNED EXEMPTION CERTIFICATE AUTHORIZING SUCH PURCHASES FOR THE CONSTRUCTION, REPAIR OR REMODELING PROJECT TO EACH CONTRACTOR AND/OR SUBCONTRACTOR. FOR FURTHER INFORMATION PLEASE CONTACT THE DEPARTMENT OF PARKS AND RECREATION, TELEPHONE (573) 341-2386. A FORM APPROVED BY THE DEPARTMENT WILL BE PROVIDED UPON REQUEST.

4.8 PERMITS, FEES AND NOTICES

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

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

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

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

4.9 ALLOWANCES

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

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

4.10 SUPERINTENDENT

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

4.11 PROGRESS SCHEDULE

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

4.12 DOCUMENTS AND SAMPLES AT THE SITE

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

4.13 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

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

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

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

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

4.14 USE OF SITE

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

4.15 CUTTING AND PATCHING OF WORK

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

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

4.16 CLEANING UP

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

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

4.17 COMMUNICATIONS

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

4.18 ROYALTIES AND PATENTS

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

4.19 INDEMNIFICATION

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

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

4.19.3 The obligations of the Contractor under this Paragraph 4.18 shall not extend to the liability of the Parks and Recreation Director, his agents or employees, arising out of (.1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (.2) the giving of or the failure to give directions or instruction by the Parks and Recreation Director, his agents or employees provided such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 5 SUBCONTRACTORS

5.1 DEFINITION

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

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

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

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

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

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

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

5.3 SUBCONTRACTUAL RELATIONS

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

ARTICLE 6 WORK BY CITY OR BY SEPARATE CONTRACTORS

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

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

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

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

6.2 MUTUAL RESPONSIBILITY

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

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

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

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

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

6.3 CITY'S RIGHT TO CLEAN UP

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

ARTICLE 7 MISCELLANEOUS PROVISIONS

7.1 GOVERNING LAW

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

7.2 SUCCESSORS AND ASSIGNS

7.2.1 The City and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due to him hereunder, without the previous written consent of the City.

7.3 WRITTEN NOTICE

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

7.4 CLAIMS FOR DAMAGE

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

7.5 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

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

7.6 RIGHTS AND REMEDIES

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

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

7.7 TESTS

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

7.7.2 If the City determines that any Work requires special inspection, testing, or approval which Subparagraph 7.7.1 does not include, he will instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Subparagraph 7.7.1. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof, otherwise the City shall bear such costs, and an appropriate Change Order shall be issued.

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

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

7.8 INTEREST

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

7.9 ARBITRATION

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

7.9.2 Notice of the demand of arbitration shall be filed in writing with the other party of the City of Rolla-Contractor Agreement and with the American Arbitration Association, and a copy shall be filed with the Parks and Recreation Director. The demand for arbitration shall be made within the time limits specified in Subparagraph 2.2.12 where applicable, and in all other cases within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

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

ARTICLE 8 TIME

8.0 SCOPE OF WORK PAGE NO. 14 SPECIFIES 60 CALENDAR DAYS FROM NOTIFICATION OF AWARD OF BID

8.1 DEFINITIONS

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

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

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

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

8.2 PROGRESS AND COMPLETION

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

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

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the City or the Parks and Recreation Director, or by any employee of either, or by any separate Contractor employed by the City or by changes ordered in the Work, or by labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control, or by delay authorized by the City pending arbitration, or by any other cause which the Parks and Recreation Director

determines may justify the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Parks and Recreation Director may determine.

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

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

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

9.2 SCHEDULE OF VALUES

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

9.3 APPLICATIONS FOR PAYMENT

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

9.4 CERTIFICATES FOR PAYMENT

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

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

9.5 PROGRESS PAYMENTS

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

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

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

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

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

9.6 PAYMENTS WITHHELD

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

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

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

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

9.7 FAILURE OF PAYMENT

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

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

9.8 SUBSTANTIAL COMPLETION

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

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

9.9 FINAL COMPLETION AND FINAL PAYMENT

9.9.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Parks and Recreation Director or his designee(s) will promptly make such inspection and, when he finds the Work acceptable under the Contract Documents and the Contract fully performed, he will promptly issue a final Certificate for Payment stating that to the best of his knowledge, information and belief, and on the basis of his observations and inspections, the Work has been completed in accordance with the terms and conditions of the contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate, is due and payable. The Parks and Recreation Director's final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Subparagraph 9.9.2 have been fulfilled.

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

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

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

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

10.2 SAFETY OF PERSONS AND PROPERTY

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

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

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

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

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

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

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

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

10.3 EMERGENCIES

10.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article 12 for Changes in the Work.

10.4 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)

10.4.1 Safety Training

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

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

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

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

10.4.2 Notice of Penalties for Failure to Provide Safety Training

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

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

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

10.5 MISSOURI REVISED STATUTES

Chapter 319 - General Safety Requirements - Sections 319.075 - 319.090

10.5.1 Citation of law.

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

(L. 1991 S.B. 214 & 264 § 1)

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

10.5.2 Definitions.

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

(1) "Authorized person":

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

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

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

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

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

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

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

(L. 1991 S.B. 214 & 264 § 2)

Activities within ten feet of power lines prohibited, exceptions.

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

(L. 1991 S.B. 214 & 264 § 3)

10.5.3 Special devices and precautions required--costs.

319.083. 1. When any person desires to temporarily carry out any function or activity in closer proximity to any high voltage overhead line than is permitted by sections 319.075 to 319.090, the person or persons responsible for the function or activity shall notify the public utility which owns or operates the high voltage overhead line of the function or activity, and shall make appropriate arrangements with the public utility for temporary mechanical barriers, temporary de-energization and grounding of the conductors, temporary rerouting of electric current or temporary relocating of the conductors, before proceeding with any function or activity which would impair the clearances required by sections 319.075 to 319.090.

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

(L. 1991 S.B. 214 & 264 § 4)

10.5.4 Presumption of negligence, when, rebuttable.

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

(L. 1991 S.B. 214 & 264 § 5)

10.5.5 Exemptions from law.

319.088. Sections 319.075 to 319.090 shall not apply to:

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

(2) Governmental entities responding to an emergency situation.

(L. 1991 S.B. 214 & 264 § 6)

10.5.6 Violations, penalty.

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

ARTICLE 11 INSURANCE

11.1 CONTRACTOR'S LIABILITY INSURANCE

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

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

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

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

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

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

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

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

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

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

11.2 CITY'S LIABILITY INSURANCE

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

11.3 CONTRACTOR'S BUILDERS' RISK INSURANCE

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

ARTICLE 12 CHANGES IN THE WORK

12.1 CHANGE ORDERS

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

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

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

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

12.1.4 If none of the methods set forth in Clauses 12.1.3.1, 12.1.2.2, or 12.1.3.3 is agreed upon, the Contractor, provided he receives a written order signed by the Mayor, shall promptly proceed with the Work involved. The cost of such Work shall then be determined by the Parks and Recreation Director on the basis of the reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Clauses 12.1.3.3 and 12.1.3.4 above, the Contractor shall keep and present, in such form as the Parks and Recreation Director may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract Documents, cost shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; workers, or worker's compensation insurance; bond

premiums; rental value of equipment and machinery; and the additional cost of supervision and field office personnel directly attributable to the change. Pending final determination of cost to the Owner, payments on account shall be made on the Parks and Recreation Director's Certificate for Payment. The amount of credit to be allowed by the Contractor to the City of any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Parks and Recreation Director. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

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

12.2 CONCEALED CONDITIONS

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

12.3 CLAIMS FOR ADDITIONAL COST

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

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

12.4 MINOR CHANGES IN THE WORK

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

not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order, and shall be binding on the City and the Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 13 UNCOVERING AND CORRECTION OF WORK

13.1 UNCOVERING OF WORK

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

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

13.2 CORRECTION OF WORK

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

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

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

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

13.2.5 If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time fixed by written notice from the Parks and Recreation Director, the City may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten days thereafter, the City may upon ten additional days' written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the Parks and Recreation Director's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the City.

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

13.2.7 Nothing contained in this Paragraph 13.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 4.5 hereof. The establishment of the time period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations other than specifically to correct the Work.

13.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

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

ARTICLE 14 TERMINATION OF THE CONTRACT

14.1 TERMINATION OF THE CONTRACT

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

the City and the Parks and Recreation Director, terminate the Contract and recover from the City payment for all Work executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit and damages.

14.2 Termination for Cause and for Convenience

14.1.1 The City of Rolla reserves the right to terminate the contract at any time, for the convenience of the City without penalty or recourse, by giving written notice to the contractor at least thirty (30) calendar days prior to the effective date of such termination. In the event of termination pursuant to this paragraph, all documents, data, reports, supplies, equipment, and accomplishments prepared, furnished or completed by the contractor pursuant to the terms of the contract shall, at the option of the City, become the property of the City. The contractor shall be entitled to receive compensation for services and/or supplies delivered to and accepted by the City pursuant to the contract prior to the effective date of termination.

14.1.2 Termination for Cause –

a. In the event of material breach of the contractual obligations by the contractor, City of Rolla may cancel the contract. At its sole discretion, City of Rolla may give the contractor an opportunity to cure the breach or to explain how the breach will be cured. The actual cure must be completed within no more than 10 working days from notification, or at a minimum the contractor must provide the City of Rolla within 10 working days from notification a written plan detailing how the contractor intends to cure the breach.

b. If the contractor fails to cure the breach or if circumstances demand immediate action, the City of Rolla will issue a notice of cancellation terminating the contract immediately. If it is determined the City improperly canceled the contract, such cancellation shall be deemed a termination for convenience in accordance with the contract.

c. If the City of Rolla cancels the contract for breach, the City reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the City deems appropriate and charge the contractor for any additional costs incurred thereby.

ARTICLE 15 SUPPLEMENTAL GENERAL CONDITIONS

15.1 CERTIFICATE OF OWNER’S ATTORNEY

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

15.2 CONFLICT OF INTEREST

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

15.2.2 No official of the OWNER who is authorized in such capacity and on behalf of the OWNER to negotiate, make, accept or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspecting, construction of the project, shall become directly or indirectly interested personally in this AGREEMENT or in any part thereof. No

officer, employee, ARCHITECT, ATTORNEY, Parks and Recreation Director or INSPECTOR of or for the OWNER who is authorized in such capacity and on behalf of the OWNER who is in any legislative, executive, supervisory, or other similar function in connection with the construction of the project, shall become directly or indirectly interested personally in this AGREEMENT in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

15.3 PROCUREMENT OF RECOVERED MATERIALS

Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

15.4 CLEAN AIR ACT

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

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

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

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

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

SPECIAL CONDITIONS

1.1 INSURANCE

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

1.2 WORKERS’ COMPENSATION INSURANCE

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

1.3 PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

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

(1) Public Liability Insurance: The Contractor shall carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the City as additional named insured with endorsement coverage in amounts sufficient to cover the sovereign immunity limits for Missouri public entities (\$3,000,000 per claimant and \$3,000,000 per occurrence) as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610 R.S.Mo.

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

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

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

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

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

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

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

2.1 TIME FOR COMPLETION

2.1.1 Project to be completed and accepted on or before September 1, 2026

3.1 LIQUIDATED DAMAGES

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

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

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

4.1 SPECIAL WAGE DETERMINATION

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

5.1 NONDISCRIMINATION IN EMPLOYMENT

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

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

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

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

6.1 PAYMENTS

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

6.1.2 The payment made to Contractor shall be on account of the total amount payable to Contractor by or for Owner, and all material and work covered by partial payment made shall thereupon become the sole property of Owner. No such payment shall be deemed to be in accord and satisfaction as to any item or items for which such payment is made, and this provision shall not be construed as relieving Contractor from sole responsibility for care and protection of materials and work upon which payments have been made or restoration of any damaged work or as a waiver of the right of Owner to require fulfillment of all terms of the Contract.

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

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

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

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

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

7.1 HOLD HARMLESS AGREEMENT

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

8.1 AFFIDAVIT COMPLIANCE WITH THE PREVAILING WAGE LAW

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

9.1 CONTRACTOR’S AFFIDAVIT REGARDING SETTLEMENT OF CLAIMS

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

10.1 BUILD AMERICA, BUY AMERICA

10.1 BUY AMERICA POLICY

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

10.2 BIPARTISAN INFRASTRUCTURE LAW

As required by Section 70914 of the Bipartisan Infrastructure Law (also known as the Infrastructure Investment and Jobs Act), P.L. 117-58, on or after May 14, 2022, none of the funds under a federal award that are part of Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver. The definition for “infrastructure” per P.L. 117-58 includes the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy. If any portion of this project is within the enumerated categories of “infrastructure” then the materials used for that portion of the project must submit Build America, Buy America (BABA) Certification. If the project does not fund any of the enumerated categories of “infrastructure” then BABA Certification is not required

11.0 Businesses Registered to Do Business in Missouri and in Good Standing

Contractor must ensure that its vendors, contractors, or subcontractors are registered and in good standing with the State of Missouri (unless not required by law to register under law) by checking the entity on the Missouri Secretary of State’s business entity search or by requiring a copy of a certificate of good standing.

12.0 Anti-Discriminations against Israel Act

Contractor certifies that it is not currently, and will not for the duration of the contract, engage in a boycott of goods or services from: (a) the State of Israel; (b) companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or (c) persons or entities doing business in the State of Israel, and agrees to not engage in these activities for the duration of this contract.

**CERTIFICATION OF
NON-SEGREGATED FACILITIES**

The federally assisted construction contractor certifies that he/she does not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he/she does not permit his/her employees to perform their services at any location, under his/her control, where segregated facilities are maintained. The federally assisted construction contractor certifies further that he/she will not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he/she will not permit his/her employees to perform their services at any location, under his/her control, where segregated facilities are maintained. The federally assisted construction contractor agrees that a breach of this section is a violation of the Equal Opportunity Clause in this contract. As used in this caption, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national of because of habit, local custom, or otherwise. The federally assisted construction contractor agrees that (except where he/she has obtained identical certifications from proposed subcontractors for specific time periods) he/she will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that he/she will retain such certifications in his/her files.

NOTE-. The penalty for making false statements in offers is prescribed in 18 U. S. C. 1001.

Contractor Signature _____

Typed Name & Title _____ Date _____

U.S. Department of the Interior

Certifications Regarding Debarment, Suspension and Other Responsibility Matters, Drug-Free Workplace Requirements and Lobbying

Persons signing this form should refer to the regulations referenced below for complete instructions:

Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions - **The prospective primary participant further agrees by submitting this proposal that it will include the clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.** See below for language to be used or use this form certification and sign. (See Appendix A of Subpart D of 43 CFR Part 12.)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions - (See Appendix B of Subpart D of 43 CFR Part 12.)

Certification Regarding Drug-Free Workplace Requirements - Alternate I. (Grantees Other Than Individuals) and Alternate II. (Grantees Who are Individuals) - (See Appendix C of Subpart D of 43 CFR Part 12)

Signature on this form provides for compliance with certification requirements under 43 CFR Parts 12 and 18. The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of the Interior determines to award the covered transaction, grant, cooperative agreement or loan.

PART A: Certification Regarding Debarment, Suspension, and Other Responsibility Matters- Primary Covered Transactions

CHECK ___ IF THIS CERTIFICATION IS FOR A PRIMARY COVERED TRANSACTION AND IS APPLICABLE.

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

PART B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

CHECK ___ IF THIS CERTIFICATION IS FOR A LOWER TIER COVERED TRANSACTION AND IS APPLICABLE.

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

PART C: Certification Regarding Drug-Free Workplace Requirements

CHECK ___ IF THIS CERTIFICATION IS FOR AN APPLICANT WHO IS NOT AN INDIVIDUAL.

Alternate I. (Grantees Other Than Individuals)

A. The grantee certifies that it will or continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an ongoing drug-free awareness program to inform employees about--
 - (1) The dangers of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will --
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted --
 - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a) (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check ___ if there are workplaces on files that are not identified here.

PART D: Certification Regarding Drug-Free Workplace Requirements

CHECK ___ IF THIS CERTIFICATION IS FOR AN APPLICANT WHO IS AN INDIVIDUAL.

Alternate II. (Grantees Who Are Individuals)

- (a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;
- (b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to the grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

PART E: Certification Regarding Lobbying
Certification for Contracts, Grants, Loans, and Cooperative Agreements

CHECK ___ IF CERTIFICATION IS FOR THE AWARD OF ANY OF THE FOLLOWING AND THE AMOUNT EXCEEDS \$100,000: A FEDERAL GRANT OR COOPERATIVE AGREEMENT; SUBCONTRACT, OR SUBGRANT UNDER THE GRANT OR COOPERATIVE AGREEMENT.

CHECK ___ IF CERTIFICATION FOR THE AWARD OF A FEDERAL LOAN EXCEEDING THE AMOUNT OF \$150,000, OR A SUBGRANT OR SUBCONTRACT EXCEEDING \$100,000, UNDER THE LOAN.

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

As the authorized certifying official, I hereby certify that the above specified certifications are true.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL

TYPED NAME AND TITLE

DATE

EXHIBIT
BUSINESS ENTITY CERTIFICATION, ENROLLMENT DOCUMENTATION,
AND AFFIDAVIT OF WORK AUTHORIZATION

BUSINESS ENTITY CERTIFICATION:

The project sponsor must certify their current business status by completing either Box A or Box B or Box C on this Exhibit.

- BOX A:** To be completed by a non-business entity as defined below.
- BOX B:** To be completed by a business entity who has not yet completed and submitted documentation pertaining to the federal work authorization program as described at http://www.dhs.gov/files/programs/gc_1185221678150.shtm.
- BOX C:** To be completed by a business entity who has current work authorization documentation on file with a Missouri state agency including Division of Purchasing and Materials Management.

Business entity, as defined in section 285.525, RSMo, pertaining to section 285.530, RSMo, is any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood. The term “**business entity**” shall include but not be limited to self-employed individuals, partnerships, corporations, contractors, and subcontractors. The term “**business entity**” shall include any business entity that possesses a business permit, license, or tax certificate issued by the state, any business entity that is exempt by law from obtaining such a business permit, and any business entity that is operating unlawfully without such a business permit. The term “**business entity**” shall not include a self-employed individual with no employees or entities utilizing the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo.

Note: Regarding governmental entities, business entity includes Missouri schools, Missouri universities (other than stated in Box C), out of state agencies, out of state schools, out of state universities, and political subdivisions. A business entity does not include Missouri state agencies and federal government entities.

BOX A – CURRENTLY NOT A BUSINESS ENTITY

I certify that _____ (**Company/Individual Name**) **DOES NOT CURRENTLY MEET** the definition of a business entity, as defined in section 285.525, RSMo pertaining to section 285.530, RSMo as stated above, because: (check the applicable business status that applies below)

- I am a self-employed individual with no employees; **OR**
- The company that I represent employs the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo.

I certify that I am not an alien unlawfully present in the United States and if _____ (**Company/Individual Name**) is awarded a Land and Water Conservation Fund Grant for _____ (**Project Title**) and if the business status changes during the project period to become a business entity as defined in section 285.525, RSMo, pertaining to section 285.530, RSMo, then, prior to proceeding with the project as a business entity, _____ (**Company/Individual Name**) agrees to complete Box B, comply with the requirements stated in Box B and provide the Department of Natural Resources, Division of State Parks with all documentation required in Box B of this exhibit.

Authorized Representative’s Name (Please Print)

Authorized Representative’s Signature

Company Name (if applicable)

Date

EXHIBIT 1, continued

(Complete the following if you DO NOT have the E-Verify documentation and a current Affidavit of Work Authorization already on file with the State of Missouri. If completing Box B, do not complete Box C.)

BOX B – CURRENT BUSINESS ENTITY STATUS

I certify that _____ (Business Entity Name) **MEETS** the definition of a business entity as defined in section 285.525, RSMo, pertaining to section 285.530.

Authorized Business Entity Representative's
Name (Please Print)

Authorized Business Entity
Representative's Signature

Business Entity Name

Date

E-Mail Address

As a business entity, the project sponsor must perform/provide each of the following. The project sponsor should check each to verify completion/submission of all of the following:

- Enroll and participate in the E-Verify federal work authorization program (Website: http://www.dhs.gov/files/programs/gc_1185221678150.shtm; Phone: 888-464-4218; Email: e-verify@dhs.gov) with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services required herein; AND
- Provide documentation affirming said company's/individual's enrollment and participation in the E-Verify federal work authorization program. Documentation shall include EITHER the E-Verify Employment Eligibility Verification page listing the project sponsor's name and company ID OR a page from the E-Verify Memorandum of Understanding (MOU) listing the project sponsor's name and the MOU signature page completed and signed, at minimum, by the project sponsor and the Department of Homeland Security – Verification Division. If the signature page of the MOU lists the project sponsor's name and company ID, then no additional pages of the MOU must be submitted; AND
- Submit a completed, notarized Affidavit of Work Authorization provided on the next page of this Exhibit.

EXHIBIT 1, continued

(Complete the following if you have the E-Verify documentation and a current Affidavit of Work Authorization already on file with the State of Missouri. If completing Box C, do not complete Box B.)

BOX C – AFFIDAVIT ON FILE - CURRENT BUSINESS ENTITY STATUS

I certify that _____ (**Business Entity Name**) **MEETS** the definition of a business entity as defined in section 285.525, RSMo, pertaining to section 285.530, RSMo, and have enrolled and currently participates in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the Land and Water Conservation Fund project with the State of Missouri. We have previously provided documentation to a Missouri state agency or public university that affirms enrollment and participation in the E-Verify federal work authorization program. The documentation that was previously provided included the following.

- ✓ The E-Verify Employment Eligibility Verification page OR a page from the E-Verify Memorandum of Understanding (MOU) listing the project sponsor’s name and the MOU signature page completed and signed by the project sponsor’s and the Department of Homeland Security – Verification Division
- ✓ A current, notarized Affidavit of Work Authorization (must be completed, signed, and notarized within the past twelve months).

Name of **Missouri State Agency** or **Public University*** to Which Previous E-Verify Documentation Submitted:

(*Public University includes the following five schools under chapter 34, RSMo: Harris-Stowe State University – St. Louis; Missouri Southern State University – Joplin; Missouri Western State University – St. Joseph; Northwest Missouri State University – Maryville; Southeast Missouri State University – Cape Girardeau.)

Date of Previous E-Verify Documentation Submission: _____

Previous **Bid/Contract Number** for Which Previous E-Verify Documentation Submitted: _____
(if known)

Authorized Business Entity Representative’s
Name (Please Print)

Authorized Business Entity
Representative’s Signature

E-Verify MOU Company ID Number

E-Mail Address

Business Entity Name

Date

FOR STATE USE ONLY

Documentation Verification Completed By:

Buyer

Date

Build America, Buy America Certification

Project Number: _____

Project Title: _____

As required by Section 70914 of the Bipartisan Infrastructure Law (also known as the Infrastructure Investment and Jobs Act), P.L. 117-58, on or after May 14, 2022, none of the funds under a federal award that are part of Federal financial assistance program for infrastructure (see definition below) may be obligated for a project (see definition below) unless all of the iron, steel, manufactured products, and construction materials (see definition below) used in the project are produced in the United States, unless subject to an approved waiver. The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this program.

Recipients of an award of Federal financial assistance are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

1. all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. all manufactured products used in the project are produced in the United States —this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
3. all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

For further information on the Buy America preference, please visit www.doi.gov/grants/BuyAmerica. Additional information can also be found at the White House Made in America Office website: www.whitehouse.gov/omb/management/made-in-america/.

Definitions

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime

facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

“Construction materials” includes an article, material, or supply that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

“Construction Materials” does not include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States

Build America, Buy America Waiver Requests:

When necessary, recipients may apply for, and the Department of the Interior (DOI) may grant, a waiver from these requirements, subject to review by the Made in America Office. The DOI may waive the application of the domestic content procurement preference (see definition above) in any case in which it is determined that one of the below circumstances applies:

1. Non-availability Waiver: the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality;
2. Unreasonable Cost Waiver: the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent; or
3. Public Interest Waiver: applying the domestic content procurement preference would be inconsistent with the public interest.

There may be instances where an award qualifies, in whole or in part, for an existing DOI general applicability waiver as described at: www.doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers.

If the specific financial assistance agreement, infrastructure project, or non-domestic materials meets the criteria of an existing general applicability waiver within the limitations defined within the waiver, the recipient is not required to request a separate waiver for non-domestic materials.

If a general applicability waiver does not already apply, and a recipient believes that one of the above circumstances applies to an award, a request to waive the application of the domestic content procurement preference may be submitted to the financial assistance awarding officer in writing. Waiver requests shall include the below information. The waiver shall not include any Privacy Act information, sensitive data, or proprietary information within their waiver request. Waiver requests will be posted to www.doi.gov/grants/buyamerica and are subject to public comment periods of no less than 15 days. Waiver requests will also be reviewed by the Made in America Office.

1. Type of waiver requested (non-availability, unreasonable cost, or public interest).
2. Requesting entity and Unique Entity Identifier (UEI) submitting the request.
3. Department of Interior Bureau or Office who issued the award.
4. Federal financial assistance listing name and number (reference block 2 on DOI Notice of Award)
5. Financial assistance title of project (reference block 8 on DOI Notice of Award).
6. Federal Award Identification Number (FAIN).
7. Federal funding amount (reference block 11.m. on DO Notice of Award).
8. Total cost of Infrastructure expenditures (includes federal and non-federal funds to the extent known).
9. Infrastructure project description(s) and location(s) (to the extent known).
10. List of iron or steel item(s), manufactured goods, and construction material(s) the recipient seeks to waive from Buy America requirements. Include the name, cost, countries of origin (if known), and relevant PSC or NAICS code for each.
11. A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.
12. A statement of waiver justification, including a description of efforts made (e.g., market research, industry outreach) by the recipient, in an attempt to avoid the need for a waiver. Such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation.
13. Anticipated impact if no waiver is issued. Approved waivers will be posted at www.doi.gov/grants/BuyAmerica/ApprovedWaivers; recipients requesting a waiver will be notified of their waiver request determination by an awarding officer.

The undersigned Proposer hereby certifies on behalf of itself and all contractors (at all tiers) that it will meet Build America, Buy America requirements in Section 70914 of the Bipartisan Infrastructure Law P.L. 117-58, using one of the following provisions:

_____ The infrastructure project/product contains no steel or iron products, manufactured products or construction materials manufactured outside the United States per Section 70914 of the Bipartisan Infrastructure Law, P.L. 117-58. If there is ANY foreign steel or iron, manufactured products or construction materials in your infrastructure project/product you may not check this box.

_____ The project/product has foreign steel or iron, manufactured products, or construction materials; a **Build America, Buy America** waiver is required. The Contracting Entity may, but is not obligated to, seek a waiver of Build America, Buy America requirements if grounds for the waiver exist. However, Proposer certifies that it will comply with the applicable Build America, Buy America requirements if a waiver of those requirements is not available or not pursued by the Contracting Entity. The waiver process can take time and the project may not move forward until a waiver is completed.

A false certification is a criminal act in violation of 18 USC 1001. Should this Agreement be investigated, Proposer has the burden of proof to establish that it is in compliance.

Proposer: _____

Signature of Authorized Official: _____

Name of Authorized Official: _____

Title: _____

Date: _____

CERTIFICATE OF MATERIALS ORIGIN

PROJECT NUMBER		CONTRACT ID	
ITEM DESCRIPTION		BID ITEM NUMBER	
INVOICE NUMBER		QUANTITY	
DATE RECEIVED		BILL OF LADING No.	

MATERIAL SOURCE (NAME AND ADDRESS) TO INCLUDE EACH SUPPLIER, FABRICATOR, AND MANUFACTURER INCLUDING HEAT/BATCH NUMBERS IF AVAILABLE

MATERIAL DESCRIPTION

DESCRIPTION OF MATERIALS OF UNKNOWN ORIGIN OR FOREIGN MATERIALS DELIVERED TO THE PROJECT

This certification is made for the purpose of establishing the materials acceptance under the Build America, Buy America Certification (Bipartisan Infrastructure Law P.L 117-58 Section 70914). All iron and steel, manufactured products, and construction materials, including protective coating for the domestic materials described above occurred in the United States of America. Manufacturer's certificates verify the origin above described in the domestic materials and will be kept on file for three years by the suppliers following final payment. Copies will be provided to the National Park Service upon request.

I declare under penalty of perjury under the Missouri and Federal Laws that the foregoing is true and correct.

Company Name and Address	Authorized Representative
	<p>Name:</p> <p>Title:</p> <p>Signature:</p> <p>Date:</p>

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

_____, 20 _____

To the City of Rolla, Missouri

Gentlemen:

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

Contractor

By _____
(Signature)

(Title)

State of _____

County of _____ ss.

Subscribed and sworn to before me this _____ day of
_____, 20 _____, at _____

Notary Public

SEAL

My Commission expires _____, 20 _____

GENERAL CONDITIONS
FOR FEDERALLY FUNDED/ASSISTED CONSTRUCTION PROJECTS

1. These General Conditions for Federally Funded/Assisted Construction Projects (GCFFAC) must be physically incorporated in each construction contract funded by the Land and Water Conservation Fund in Missouri. The contractor (or subcontractor) must insert this document in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). The applicable requirements of the GCFFAC are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

GCFFAC must be included in all contracts to be paid using federal assistance, and in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies must physically incorporate the GCFFAC in bid proposal or request for proposal documents, and the GCFFAC must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and Department of Natural Resources.

1.0 Notice of Federal Funding

This project is being performed in whole or in part using federal funds. Therefore, all work or services performed by the Contractor and its subcontractors shall be subject to the terms and conditions set forth below in addition to all terms and conditions in the Construction Contract, General Conditions, and other contract documents. The concepts, rules, and guidelines set forth in 2 C.F.R. 200 describing allowable costs and administrative requirements apply.

2.0 Definitions

As used herein, "Federal Government" means the government of the United States of America. "Federal Agency" means an agency, entity, department or division of the Federal Government that is providing funding for this project. All other terms shall have the meanings established in the Construction Contract, General Conditions, and/or Project Manual, unless such definitions conflict with a definition provided in an applicable statute or regulation.

3.0 Conflicting Terms or Conditions

To the extent that any terms or conditions set forth herein conflict with the Construction Contract or its General Conditions, the more stringent of the two terms and conditions shall govern.

4.0 No Obligation by Federal Government

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.

5.0 Compliance with Federal Laws, Regulations and Executive Orders

The Contractor and its subcontractors and suppliers are required to comply with all applicable Federal laws, regulations, and executive orders, regardless of whether set forth herein. The Contractor shall assist and enable the State of Missouri in complying with any requirements imposed by the Federal Agency as a condition of funding.

6.0 Compliance with Civil Rights Provisions

The Contractor shall comply with all Federal statutes, executive orders, and regulations relating to nondiscrimination. These include, but are not limited to the following:

Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin;

Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex;

Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps;

The Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age;

Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing;

Title VII of the Civil Rights Act of 1964 (42 U.S.C. part 2000(e)), which prohibits discrimination against employees on the basis of religion;

Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and

The requirements of any other nondiscrimination statute(s) that may apply to the application.

7.0 Equal Employment Opportunity (41 C.F.R. 60-1.4(b)).

During the performance of this contract, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during

employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicants or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.
- (4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and sub contractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and sub contractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

8.0 Notice of Requirement for Affirmative Action To Ensure Equal Employment Opportunity
(Executive Order 11246, 41 C.F.R. 60-4.2)

(1) The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.

(2) The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Time-tables	Goals for minority participation for each trade	Goals for female participation in each trade

Insert Goals Established by U.S. Department of Labor: available at <https://www.dol.gov/sites/dolgov/files/ofccp/ParticipationGoals.pdf>.

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a

geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 C.F.R. pt. 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 C.F.R. 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 C.F.R. pt. 60-4. Compliance with the goals will be measured against the total work hours performed.

(3) The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

(4) As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any).

9.0 Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246 - 41 C.F.R. 60-4.3)

(1) As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

(3) If the Contractor is participating (pursuant to 41 C.F.R. 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

(4) The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the FEDERAL REGISTER in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

(5) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

(6) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(7) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where

possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one

month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 C.F.R. pt. 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

(8) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(9) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

(10) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

(11) The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

(12) The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

(13) The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 C.F.R. 60-4.8.

(14) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

(15) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

10.0 Prohibition of Segregated Facilities

(1) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Employment Opportunity clause in this contract.

(2) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

- (3) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Employment Opportunity clause of this contract.

11.0 Davis-Bacon Act (40 U.S.C. §§ 3141-3144, and §§ 3146-3148, and 29 C.F.R. pt. 5)

(The requirements of the Davis-Bacon Act and this section are not applicable to projects funded by the Land and Water Conservation Fund.)

- (1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. pt. 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis–Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis–Bacon poster (WH–1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including

the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social

security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis–Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis–Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 C.F.R. 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime Contractor to require a subcontractor to provide addresses and social security numbers to the prime Contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 C.F.R. pt. 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 C.F.R. pt. 5, and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. pt. 3;

- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
- (D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal Agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. 5.12.

(4) Apprentices and trainees—

- (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no

longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (ii) Trainees. Except as provided in 29 C.F.R. 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. pt. 30.
- (5) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 C.F.R. pt. 3, which are incorporated by reference in this contract.
- (6) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 C.F.R. 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal Agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. 5.5.
- (7) Contract termination: debarment. A breach of the contract clauses in 29 C.F.R. 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 C.F.R. 5.12.
- (8) Compliance with Davis–Bacon and Related Act requirements. All rulings and interpretations of the Davis–Bacon and Related Acts contained in 29 C.F.R. pts. 1, 3, and 5 are herein incorporated by reference in this contract.
- (9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. pt.s 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of

its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

- (i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis–Bacon Act or 29 C.F.R. 5.12(a)(1).
- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis–Bacon Act or 29 C.F.R. 5.12(a)(1).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

11.0 Copeland “Anti-Kickback” Act

- (1) The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract. The Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled.
- (2) The Contractor or subcontractor shall insert in any subcontracts the clause above, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (3) A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. 5.12.

12.0 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 to 3708, 29 C.F.R. 5.5)

- (1) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be

withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

- (4) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

13.0 Suspension and Debarment (Executive Orders 12549 and 12689, 2 C.F.R. pt. 180)

- (1) A contract award (see 2 C.F.R. 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (3 C.F.R. pt. 1986 Comp., p. 189) and 12689 (3 C.F.R. pt. 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (2) The contractor is required to verify that none of the contractor’s principals (defined at 2 C.F.R. 180.995) or its affiliates (defined at 2 C.F.R. 180.905) are excluded (defined at 2 C.F.R. 180.940) or disqualified (defined at 2 C.F.R. 180.935).
- (3) The contractor must comply with 2 C.F.R. pt. 180, subpart C and the regulations of the granting Federal Agency regarding suspension and debarment, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (4) This certification is a material representation of fact relied upon by the Owner. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C in addition to remedies available to the Owner, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (5) By submitting a bid, the bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

14.0 Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352)

- (1) Contractors that apply or bid for an award exceeding \$100,000 agree to file the required certification (set forth below), in compliance with 31 U.S.C. § 1352 (as amended).
- (2) Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352.

- (3) Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

CERTIFICATION REGARDING LOBBYING

The Bidder or Offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

15.0 Procurement of Recovered Materials

The Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. § 6962). The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Information about this requirement, along with the list of EPA designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

16.0 Fair Labor Standards Act

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 C.F.R. pt. 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers. The Contractor has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

17.0 Access to Records and Reports

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Owner, the Federal Agency and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

18.0 Occupational Health and Safety Act

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 C.F.R. pt. 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 C.F.R. pt. 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

19.0 Rights to Inventions

Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Owner in any resulting invention as established by 37 C.F.R. pt. 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within 37 C.F.R. 401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental, or research work.

20.0 Energy Conservation

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201 et seq.).

21.0 Clean Air Act and Federal Water Pollution Control Act

- (1) If the amount of the Contract exceeds \$150,000, the Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. and the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.
- (2) The Contractor agrees to report each violation to the Owner, and understands and agrees that the Owner will, in turn, report each violation as required to assure notification to the Federal Agency and the appropriate Environmental Protection Agency Regional Office.

- (3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

22.0 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights

- (1) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on contractor employee whistleblower protections established at 41 U.S.C. § 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.
- (2) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. § 4712, as described in section 3.908 of the Federal Acquisition Regulation.
- (3) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

23.0 Veteran's Preference

In the employment of labor (excluding executive, administrative, and supervisory positions), the Contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. § 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

24.0 Drug Free Workplace Act

The Contractor shall provide a drug free workplace in accordance with the Drug Free Workplace Act of 1988, 41 U.S.C. Chapter 81, and all applicable regulations. The Contractor shall report any conviction of the Contractor's personnel under a criminal drug statute for violations occurring on the Contractor's premises or off the Contractor's premises while conducting official business. A report of a conviction shall be made to the state agency within five (5) working days after the conviction.

25.0 Access Requirements for Persons with Disabilities

Contractor shall comply with 49 U.S.C. § 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

26.0 Seismic Safety

The Contractor agrees to ensure that all work performed under this contract, including work performed by subcontractors, conforms to a building code standard that provides a level of seismic safety substantially equivalent to standards established by the National Earthquake Hazards Reduction Guidelines for Contract Provisions for Obligated Sponsors and Airport Improvement Program Projects Issued on June 19, 2018 Page 61 Program (NEHRP). Local building codes that model their code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety.

27.0 Domestic Preference for Procurements

As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this contract. For purposes of this section:

- (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

28.0 Prohibition on Certain Telecommunication and Video Surveillances Services or Equipment (Pub. L. 115-232, Section 889)

Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of a Federal executive agency and recipients or subrecipients of funds from such agencies from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons. Pursuant to such provisions, the Contractor understands and agrees that the Contractor and its subcontractors shall not obligate or expend loan or grant funds from the Federal Agency under this Contract to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115–232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

APPENDIX A
APPROVED PRODUCTS LISTING

The products listed below are approved for this project. Any others not listed must be approved by the owner prior to bidding.

Structure Number	Brand	Description	Link
1 - Achilles Stretch	Landscape Structures	HealthBeat Stretch	https://www.playlsi.com/en/commercial-playground-equipment/playground-components/healthbeat-stretch/
1 - Achilles Stretch	Playworld	Static and Dynamic Stretches	https://playworld.com/product/station-1/
1 - Achilles Stretch	Pro-Playgrounds	Double Station Stretching Post	https://proplaygrounds.com/product/double-station-stretching-post-commercial-outdoor-fitness-equipment/
2 - Bench Leg Raise	Miracle Recreation	Body Curl	https://www.miracle-recreation.com/product/body-curl/
2 - Bench Leg Raise	Belson Outdoors	Body Curl Station	https://www.belson.com/Body-Curl-Station
2 - Bench Leg Raise	Gametime	Body Curl Station	https://www.gametime.com/products/body-curl-station-13579
3 - Overhead Ladder Walk	Landscape Structures	Fitcore Overhead Ladder	https://www.playlsi.com/en/commercial-playground-equipment/playground-components/fitcore-extreme-angled-overhead-ladder-13/
3 - Overhead Ladder Walk	Miracle Recreation	Monkey Bars	https://www.miracle-recreation.com/product/monkey-bar/
3 - Overhead Ladder Walk	Belson Outdoors	Overhead Ladder	https://www.belson.com/Horizontal-Ladder-Outdoor-Fitness-Station
4 - Standing Long Jump	Landscape Structures	Fitcore Quintuple Steps	https://www.playlsi.com/en/commercial-playground-equipment/playground-components/fitcore-extreme-quintuple-steps-13/
4 - Standing Long Jump	Pro-Playgrounds	Assisted Step Around	https://proplaygrounds.com/product/assisted-step-around-outdoor-fitness-station/
4 - Standing Long Jump	Pro-Playgrounds	Roman Chair Squat	https://proplaygrounds.com/product/roman-chair-squat-outdoor-fitness-station/
5 - Hip Circle	Gametime	Skill Trainer	https://www.gametime.com/products/skill-trainer-14904
5 - Hip Circle	Gametime	Shoulder Rotator	https://www.gametime.com/products/shoulder-rotator-accessible
5 - Hip Circle	Landscape Structures	Fitcore Unstable Bridge	https://www.playlsi.com/en/commercial-playground-equipment/playground-components/fitcore-extreme-unstable-bridge-13/
6 - Parallel Bar Walk	Willy Goat	Parallel Bars	https://willygoat.com/products/parallel-bars-fitness-course-section-1
6 - Parallel Bar Walk	Outdoor Workout	Parallel Bar Station	https://outdoorworkoutsupply.com/collections/outdoor-fitness-equipment-for-parks/products/actionfit-parallel-bar-station
6 - Parallel Bar Walk	Outdoor Workout	Supermax Parallel Bars	https://outdoorworkoutsupply.com/collections/fitness-trail-equipment/products/supermax-super-duty-parallel-bars
7 - Bend Knee Sit Up	Gametime	Sit Up Station	https://www.gametime.com/products/sit-up-station-13181
7 - Bend Knee Sit Up	Miracle Recreation	Sit Up Station	https://www.miracle-recreation.com/product/sit-up-2/
7 - Bend Knee Sit Up	Landscape Structures	HealthBeat Ab Crunch	https://www.playlsi.com/en/commercial-playground-equipment/playground-components/healthbeat-ab-crunchleg-lift/
8 - Vertical Jump	Gametime	Leg Extension	https://www.gametime.com/products/leg-extension-13563i
8 - Vertical Jump	Miracle Recreation	Row Station	https://www.miracle-recreation.com/product/station-row/
8 - Vertical Jump	Landscape Structures	Rope Climb	https://www.playlsi.com/en/commercial-playground-equipment/playground-components/fitcore-extreme-rope-climb-13/
8 - Vertical Jump	Gametime	High Jump Station	https://www.gametime.com/products/high-jump-station-13578
9 - Sit and Reach	Gametime	Roman Chair Squat	https://www.gametime.com/products/roman-chair-squat
9 - Sit and Reach	Miracle Recreation	Hyperextension Bench	https://www.miracle-recreation.com/product/hyperextension-bench/
9 - Sit and Reach	Landscape Structures	Squat Press	https://www.playlsi.com/en/commercial-playground-equipment/playground-components/healthbeat-squat-press/
10 - Step Up	Gametime	Polymetric Box	https://www.gametime.com/products/1-foot-plyometric-box
10 - Step Up	Miracle Recreation	Step Station	https://www.miracle-recreation.com/product/2-step/
10 - Step Up	Landscape Structures	Healthbeat Plyometrics	https://www.playlsi.com/en/commercial-playground-equipment/playground-components/healthbeat-plyometrics/
11 - Push Up	Gametime	Push-up Station	https://www.gametime.com/products/push-up-station
11 - Push Up	Miracle Recreation	Push Up	https://www.miracle-recreation.com/product/push-up-2/
11 - Push Up	Landscape Structures	Assisted Row	https://www.playlsi.com/en/commercial-playground-equipment/playground-components/healthbeat-assisted-rowpush-up/
12 - Body Curl	Gametime	Body Curl Station	https://www.gametime.com/products/body-curl-station-13579
12 - Body Curl	Miracle Recreation	Body Curl	https://www.miracle-recreation.com/product/body-curl/
12 - Body Curl	Landscape Structures	Cardio Stepper	https://www.playlsi.com/en/commercial-playground-equipment/playground-components/healthbeat-cardio-stepper/
13 - Body Lift	Pro-Playgrounds	Bench Dip	https://proplaygrounds.com/product/bench-dip-station-up197-outdoor-fitness-station/
13 - Body Lift	Kinetic Recreation	Push Up Station	https://kineticrecreation.com/collections/outdoor-fitness/products/fs-0042
13 - Body Lift	Gopher	Bench Dip	https://gophersport.com/outdoor-fitness-bench-dip
14 - Log Hop	Action Fit	Log Hop Station	https://www.actionfitoutdoors.com/products/up250-log-hop-station/
14 - Log Hop	Pro-Playgrounds	Log Hop Station	https://proplaygrounds.com/product/log-hop-station-up197-outdoor-fitness-station/
14 - Log Hop	Gopher	Log Hop	https://gophersport.com/outdoor-fitness-log-hop
15 - Trunk Twist	Pro-Playgrounds	Triple Torso Twist	https://proplaygrounds.com/product/triple-station-torso-twist-commercial-outdoor-fitness-equipment/
15 - Trunk Twist	Kinetic Recreation	Triple Body Twister	https://kineticrecreation.com/collections/outdoor-fitness/products/kf-0014
15 - Trunk Twist	Actively Play	Triple Body Twister	https://www.activelyplay.com/products/triple-body-twister
16 - Chin Up	Iron Company	Tri Level Horizontal Bar	https://www.ironcompany.com/tri-level-horizontal-bar-outdoor-fitness-equipment-triactive-usa-hbar3
16 - Chin Up	Pro-Playgrounds	Triple Chin Up	https://proplaygrounds.com/product/triple-station-inclined-chin-up-bars-commercial-outdoor-fitness-equipment/
16 - Chin Up	Kinetic Recreation	Triple Chin Up	https://kineticrecreation.com/collections/outdoor-fitness/products/kf-0003
16 - Chin Up	Action Fit	Chin up Combo	https://www.actionfitoutdoors.com/products/chin-up-combo/
16 - Chin Up	Gopher	Outdoor Chin Up	https://gophersport.com/outdoor-fitness-horizontal-chin-up
17 - Triple Static Stretch	Pro-Playgrounds	Double Hamstring Stretch	https://proplaygrounds.com/product/royal-double-station-hamstring-stretch-commercial-outdoor-fitness-equipment/
17 - Triple Static Stretch	Kinetic Recreation	Hamstring Stretch	https://kineticrecreation.com/collections/outdoor-fitness/products/kf-0009
17 - Triple Static Stretch	Willy Goat	Hamstring Stretch Station	https://willygoat.com/products/royal-double-station-hamstring-stretch-outdoor-workout-equipment
18 - Balance Beam	Iron Company	Outdoor Balance Beam	https://www.ironcompany.com/triactive-usa-balance-beam-babm
18 - Balance Beam	Pro-Playgrounds	Triple Balance Beam	https://proplaygrounds.com/product/triple-station-balance-beam-commercial-outdoor-fitness-equipment/
18 - Balance Beam	Action Fit	Balance Beam Station	https://www.actionfitoutdoors.com/products/up-251-balance-beam-station/
18 - Balance Beam	Gopher	Outdoor Balance Beam	https://gophersport.com/outdoor-fitness-balance-beam