

## **GENERAL CONDITIONS**

### **1. DEFINITIONS**

It is understood that the following terms are defined as follows:

Municipality	-	City of Kirkwood
City	-	City of Kirkwood
Owner	-	City of Kirkwood
M.S.D.	-	Metropolitan St. Louis Sewer District
Engineer	-	Director of Public Works (City Engineer) of the City of Kirkwood or his authorized representative
Contractor	-	Successful bidder awarded the work of constructing the project
Standard Specifications	-	"St. Louis County Standard Specifications for Highway Construction", latest edition, St. Louis County Department of Highways and Traffic
	-	For Sewer Construction: "Standard Specifications and Revised Standard Construction Details for Sewers and Drainage Facilities", latest edition, Metropolitan St. Louis Sewer District

### **2. CONSTRUCTION AREA**

All construction will be in public rights-of-way or easements acquired by the Owner. The Contractor shall provide all additional land necessary for temporary construction operations and for erection of temporary construction facilities and storage of his materials, together with right of access to same.

### **3. PERMITS AND LICENSES**

The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work. A City of Kirkwood Contractor's License is required of the Contractor and all subcontractors and may be obtained at Kirkwood City Hall.

### **4. TAX EXEMPTION FOR CONSTRUCTION MATERIALS AND SUPPLIES**

This project is exempt from all sales taxes for construction materials and supplies used directly in fulfilling contract requirements. Sales tax shall not be included into the unit costs for this project. The contractor shall follow the regulation as outlined in Missouri 12 CSR 10-3.388 Construction Materials.

The City will issue the contractor a tax exemption letter and a project exemption certificate. These documents are to be given to the applicable suppliers and used only for the specific project identified and will expire on the date indicated unless renewed by the City.

### **5. LAWS TO BE OBSERVED**

The Contractor shall at all times observe and comply with all Federal and State laws, all local laws, ordinances, and regulations existing at the time of or enacted subsequent to the execution of the contract which, if in any manner, affect the prosecution of the work. The Contractor and his surety shall indemnify and save harmless the Owner and all of his representatives, engineers, and employees against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by himself, his employees, or his subcontractors.

6. **PUBLIC SAFETY AND TRAFFIC CONTROL**

All work is to be performed in full compliance with City of Kirkwood Ordinance No. 5198, "Public Safety", which hereby is made a part of this contract document; and, for the convenience of the Contractor, is attached to this document.

All traffic and safety devices shall conform to the "Manual on Uniform Traffic Control Devices for Streets and Highways", American National Standard Institute D6.1-1971. At all times until final acceptance of the work, the Contractor shall provide and maintain at his own expense such signs, lights, watchmen, fences, and barriers as may be necessary to properly protect the work and provide for safe and convenient public travel.

The Contractor shall provide, erect, and maintain an adequate number of warning and protection devices along the project to inform and protect the public. All excavations three feet or greater in depth shall be protected with a fence not less than 42 inches high. Obstructions shall be illuminated during the hours of darkness. Suitable warning signs shall be provided to properly control and direct traffic. All street name signs and traffic signs shall be kept in service by the Contractor during the construction period.

Through traffic may be detoured with approval of the City Engineer. The Contractor is responsible for all detour signing and routing which must be approved by the Engineer before the detour is established.

The Contractor shall provide the Engineer with the name and telephone numbers of an individual who shall be on 24-hour call for erection and maintenance of the warning and protection devices. The cost of any erection or maintenance of the warning or protection devices by City Forces may be filled against the Contractor's monthly or final statement without any notice to the Contractor.

The Engineer shall, in all cases, determine questions which may arise relative to additional safety and control devices.

The Contractor shall immediately replace or install any street name or stop sign that has been removed during construction.

No direct payment, as such, will be made because of these requirements; but the cost thereof will be considered as incidental to the contract.

Failure to properly provide safety control devices or replace signs in accordance with this section, the City will issue one verbal warning and an 8-hour grace period for the Contractor to correct the problem. The second infraction, the City will place safety devices without any warning at a cost of fifty dollars (\$50) per day per safety device. The cost of the safety devices will be deducted from the Contractor's monthly invoice.

7. **PUBLIC CONVENIENCE**

The Contractor shall be responsible for informing residents of any change in access to their property, sufficiently in advance of such interruption of service so that the resident can take steps

to minimize personal inconvenience. The Contractor shall schedule this work, as approved by the Owner, to provide minimum inconvenience to the Public. Private residential driveways shall not be closed for more than ten consecutive calendar days except for emergency conditions. Private commercial driveways shall not be completely closed at any time without approval of the Engineer.

The Contractor shall continuously maintain the roadway, private driveways, and commercial driveways for local traffic. All public streets must be kept open for local traffic at all times. Any maintenance of the roadway or driveways by City Forces may be billed against the Contractor's monthly or final statement without any notice to the Contractor.

8. **PROTECTION OF WORK AND PROPERTY**

The Contractor shall continuously maintain adequate protection of all his work from damage. The Contractor shall be responsible for the preservation of all public and private property. He shall make good any damage, injury, or loss. He shall adequately protect adjacent property as provided by law and the Contract.

All survey monuments and property markers shall be carefully preserved in place by the Contractor who shall be responsible for the correct replacement of all such monuments and markers disturbed during the work.

**The Contractor is responsible for the protection of fresh concrete from vandalism and shall place and protect fresh concrete in such a manner as to minimize vandalism and maximize safety.**

The Contractor shall provide for normal drainage and shall continuously maintain channels, swales, pipes, culverts, and all drainage structures in the project area. The Contractor is responsible for any damage caused by his failure to provide and maintain normal drainage.

9. **INSPECTION OF THE WORK**

All work, materials, and methods of construction shall be subject to the inspection of the Engineer, who shall be the judge of the quality and suitability of them for all purposes for which they are used. Acceptance of any material or workmanship shall not serve to prevent subsequent rejection by the Engineer if he finds either or both to be unsatisfactory. The Engineer shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection. Any work done or materials used failing to meet the approval of the Engineer shall be replaced by the Contractor at his own expense. Any work done or materials used without inspection by the Engineer may, at the option of the Engineer, be ordered removed at the Contractor's expense. Inspection by the Engineer is not for the purpose of running the job and does not relieve the Contractor of his responsibilities to meet the conditions of the plans and Contract Documents.

All drainage and sewer work may be subject to the inspection of the Metropolitan St. Louis Sewer District. Their authorized representatives shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection.

10. **PARTIAL PAYMENTS TO THE CONTRACTOR**

During the progress of the work, the Contractor shall submit to the Engineer, within five (5) days after the first of each month, an invoice for the actual cost of the work satisfactorily completed to the first day of that month. The invoice shall have an itemized listing of all items of work and be based on measured quantity of completed work in place and the unit bid prices. From the amount

so determined shall be deducted five percent (5%) of such amount and all sums previously paid or properly retained under this Contract and the remainder approved for payment. The invoice is subject to review and possible rejection by the Engineer if, in the opinion of the Engineer, the invoice does not adequately represent the work completed. However, the Engineer's approval of the invoice does not represent acceptance of any work, nor acceptance of the quantities estimated.

11. **FINAL INSPECTION AND FINAL PAYMENT**

Upon due notice from the Contractor of presumptive completion of the entire project, the Engineer will make an inspection; and the Contractor will be notified of any unacceptable work. When all construction provided for and contemplated by the Contractor is found complete to the satisfaction of the Engineer, that inspection shall constitute the final inspection. After the final inspection has been completed and all conditions of the Contract have been satisfied, the City Engineer shall execute a certificate that the whole work provided for in the Contract has been completed and accepted by him under the conditions and terms thereof, whereupon the entire balance found to be due to the Contractor, including said retained percentage, shall be paid to the Contractor within thirty (30) days after the date of said certificate. All prior partial estimates and payments shall be subject to correction in the final payment.

12. **CLEANING UP, RESTORATIONS, AND REPLACEMENTS**

Unless otherwise stipulated, the Contractor shall remove daily from the Owner's property and from all public and private property, at his own expense, all temporary structures, rubbish, and waste material resulting from his operations; and he shall restore and replace the surfaces of such properties to the conditions existing prior to his operations. All materials and equipment to be stored on the site, with Engineer's approval, shall be outside of traffic lanes with proper warning devices. No excavated material shall remain on site overnight.

13. **THE OWNER'S RIGHT TO DO THE WORK**

If the Contractor should neglect to prosecute the work properly or fail to perform any provision of this Contract, the Owner, after three (3) days written notice to the Contractor, may, without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor.

14. **TERMINATION OF THE CONTRACT**

If the Contractor should be adjudged a bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should persistently or repeatedly refuse or should fail, except in cases of which extension of time provided, to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to subcontractors for material or labor, or persistently disregard laws, ordinances, or the instructions of the Engineer, or otherwise be guilty of a substantial violation of any provision of the Contract, then the Owner, upon the certificate of the Engineer that sufficient cause exists to justify such action, may, without prejudice to any other right or remedy and after giving the Contractor seven days written notice, terminate the employment of the Contractor and take possession of the premises and of all materials, tools, and appliances thereon and finish the work by whatever method he may deem expedient. In such cases, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Contract price shall exceed the expense of finishing the work, including compensation for additional managerial and administrative services, such expenses shall be paid to the Contractor. If such expenses shall exceed such unpaid balance, the Contractor shall pay the

difference to the Owner. The expense incurred through the Contractor's default shall be certified by the Engineer.

15. **SCOPE OF CONTRACTOR'S WORK**

Unless otherwise stipulated, the Contractor shall provide and pay for all bonds, insurance, materials, labor, tools, equipment, light, power, water, transportation, and other facilities necessary for the execution and completion of the work. If the Contractor, in the course of the work, finds any discrepancy between the drawings and the physical conditions of the locality, or any error or omissions in the drawings or in the layout as given by points and instructions, it shall be his duty to immediately inform the Engineer in writing; and the Engineer shall promptly verify the same. Any work done after such discovery, until authorized, will be done at the Contractor's risk.

16. **CLAIMS FOR DAMAGES**

Any claim for damages arising under this Contract shall be made in writing to the party liable within a reasonable time from the first observance of such damage, and not later than the time of final payment, except as expressly stipulated otherwise in the cause of faulty work or materials, and shall be adjusted by agreement or arbitration.

17. **LIQUIDATED DAMAGES FOR FAILURE OR DELAY IN COMPLETING WORK ON TIME**

The time for the completion of the work is specified, and it is an essential part of the Contract. The Contractor will not be entitled to any extension of Contract time because of unsuitable conditions unless suspension of the work for such conditions was authorized in writing by the Engineer.

The Engineer may make allowance for time lost due to causes which he deems justification for extension of Contract time. If the Contractor claims an extension of Contract time on the grounds that he is unable to work due to causes beyond his control, he shall state his reasons in writing, furnish proof to establish his claim, and state the approximate number of days he estimates he will be delayed. Notice of intention to claim an extension of Contract time on the above grounds shall be filed with the Engineer at the time the cause or causes occur, and the claim shall be filed in writing within 30 days after the claimed cause for the delay has ceased to exist. The count of calendar days will start on the date authorized in the Notice to Proceed.

Time is an essential element of the Contract; and it is, therefore, important that the work be pressed vigorously to completion. Should the Contractor, or in cause of default, the surety fail to complete the work within the time specified in the Contract, or within such extra time as may be allowed in the manner set out in the preceding sections, a deduction of an amount set out in the Proposal form will be made for each and every calendar day that such Contract remains uncompleted after the time allowed for the completion. The said amount set out in the Proposal is hereby agreed upon, not as a penalty, but as liquidated damages for loss to the City of Kirkwood and the public, after the expiration of the time stipulated in the Contract; and the Contractor and his surety shall be liable for any and all liquidated damages. Permitting the Contractor to continue and finish the work or any part of it after the expiration of the specified time, or after any extension of the time, shall in no way operate as a waiver on the part of the City of Kirkwood or any of its rights under the Contract.

When extra or additional work is ordered by the Engineer, the Contractor will be allowed an extension of Contract time based upon the ratio cost of such additional work bears to the Contract

price unless it can definitely be established that the extra work was of such character that it required more time than is indicated by the money value. In such cases, the reasonable time required may be allowed.

The Contractor shall be liable for liquidated damages chargeable under the Contract when the work is being completed by the City by reason of default of the Contract unless the delay is due to the negligence of the City. A delay in any part of the work or in the final completion of the project caused by the City or its agents shall not void the provisions of the Contract as to liquidated damages. Any such delay by the City or its agents will be compensated for only by the extension of Contract time.

18. **CONTRACTOR'S PLAN OF OPERATIONS**

The Contractor shall vigorously pursue the work to completion. To ensure that the work will proceed continuously through the succeeding operation to its completion with the least possible interference to traffic and inconvenience to the public, the Contractor shall submit for approval a complete, detailed schedule of his proposed construction procedure stating the time and sequence of his various operations of work, his traffic and detouring plan, and his signing and barricading plan. The Contractor shall not begin construction activities until approval from the Owner of his above proposals.

19. **CHARACTER OF WORKMEN, SUPERINTENDENT**

The Contractor shall have on the work at all times, as his agent, a competent superintendent capable of reading and thoroughly understanding the plans and specifications and thoroughly experienced in the type of work being performed. All workmen shall have sufficient skill and experience to perform properly the work assigned to them. Any person employed by the Contractor or by the subcontractor who, in the opinion of the Engineer, does not perform his work in a proper and skillful manner or is intemperate or disorderly shall, at written request of the Engineer, be removed forthwith by the Contractor or subcontractor and shall not again be employed in any portion of the work without approval of the Engineer.

20. **CHANGES IN THE WORK**

The Owner, without invalidating the Contract, may order extra work or make changes by altering, adding to, or deducting from the work, the Contract sum being adjusted accordingly. All such work shall be executed under the conditions of the original Contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change. In giving instructions, the Engineer shall have authority to make minor changes in the work, not involving extra cost and not inconsistent with the proposes of the work, but otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless in pursuance of a written order by the Engineer; and no claim for an addition to the Contract sum shall be valid unless so ordered.

The value of any such extra work or change shall be determined in one or more of the following ways:

1. By estimate and acceptance in a lump sum.
2. By unit prices named in the Contract or subsequently agreed upon.
3. By cost and percentage or by cost and a fixed fee.

If none of the above methods is agreed upon, the Contractor, provided he receives an order as above, shall proceed with the work. In such case and also under case No. 3, he shall keep and present in such form as the Engineer may direct, a correct amount of the net cost of labor and materials, together with vouchers. In any case, the Engineer shall certify to the amount due to the Contractor, including reasonable allowance for overhead and profit. Pending final determination of value, payment on account of changes shall be made on the Engineer's estimate.

21. **STATUS OF THE CITY ENGINEER**

The work shall be subject at all times to the supervision and direction of the City Engineer, or his authorized representative. To prevent disputes and litigation, it is mutually agreed that the Engineer shall, in all cases, determine the amount or quantity of the various kinds of work, and the quality of materials and workmanship to be paid for under this Contract, and he shall decide all questions which may arise relative to the performance of the work covered by the Contract. Any doubt as to the meaning of the specifications and the drawings and any obscurity or discrepancy as to their wording and intent, will be explained by the Engineer, and this explanation shall be final and binding by both parties of this Contract. The City Engineer may amend or correct any errors or omissions in the plans and specifications, when such amendments or corrections are necessary to make definite the intent indicated by a reasonable interpretation of the Contract requirements.

22. **CORRECTION OF WORK**

The Contractor shall promptly remove from the premises all materials condemned by the Engineer as failing to conform to the Contract whether incorporated in the work or not; and the Contractor shall promptly replace and re-execute all unacceptable work in accordance with the Contract and without expense to the Owner. Upon failure of the Contractor to comply with any order of the Engineer to remove and replace unacceptable work, the Engineer will have the authority to cause said work to be removed and replaced and to deduct costs from any monies due or to become due to the Contractor.

23. **CONTRACTOR'S CERTIFICATION REGARDING SETTLEMENT OF CLAIMS**

The Contractor shall, by affidavit, certify to the City of Kirkwood that all bills and claims properly due and chargeable against the work have been satisfied and shall release the City of Kirkwood from all further claims. The acceptance by the Contractor of the final payment shall constitute a release and waiver of any and all rights and privileges under the terms of the Contract; further, the acceptance by the Contractor of final payment shall relieve the City from any and all claims or liabilities for anything done or furnished relative to the work or for any act or neglect on the part of the City relating to or connected with the Contract.

If said affidavit that claims have been paid cannot be given because of a dispute as to the amount or legality of a claim and if the Contractor's affidavit clearly sets out the facts as to (1) the name and address of the unpaid claimant or claimants, (2) the amount of the disputed claim, and (3) a brief statement of the cause of the dispute, the Director of Public Works, with the consent of the surety, then may consent to and make payment of all of the final amounts and percentage due the Contractor if the Director is of the opinion that the claim has not been paid solely because the Contractor is, in good faith, questioning the legality of said claim or its amount and if the Director of Public Works is further satisfied that there is good and sufficient bond to fully protect said claimant.

24. **GUARANTEE OF MATERIALS AND CONSTRUCTION**

All materials and construction involved in this work shall be guaranteed free from defects owing to faulty material or workmanship for a period of one year after date of acceptance. Any part of work proving defective from these causes, within this period, shall be replaced free of cost to the Owner. Copies of all guarantees must be furnished the Owner before final acceptance of the work.

25. **RESPONSIBILITY FOR THE WORK**

Prior to the completion of the work by the Contractor and the acceptance thereof by the Owner, the work shall remain at the risk of the Contractor; and said Contractor shall be required to repair, replace, renew, and make good, at his own expense, all damages caused by force, vandalism, or violence of the elements or any other cause whatsoever provided; however, that in such cases the Contractor shall be entitled to a reasonable extension of time which to complete said work. In case of suspension of work from any cause whatever, the Contractor shall be responsible for the project and shall take such precautions as may be necessary to prevent damage to the project, for normal drainage, and shall erect any necessary warning signs or barricades at his expense. The Contractor shall properly and continuously maintain the roadway and private driveways for local traffic.

26. **USE OF AMERICAN MADE PRODUCTS**

The City of Kirkwood has adopted a policy that requires every public works project in excess of \$5,000 to use American products. These products are to be used whenever the quality and price are comparable with other goods.

27. **EQUAL EMPLOYMENT OPPORTUNITY**

The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or disability. 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 of training, including apprenticeship. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or disability. The Contractor shall incorporate the foregoing requirements of this paragraph in all of its subcontracts for work performed under the terms and conditions of this Contract. A breach of this provision may be grounds for Contract termination.

28. **ACCIDENT PREVENTION: OSHA**

In the performance of this Contract, the Contractor shall comply with all applicable Federal, State, County, and local laws governing safety, health, and sanitation. The Contractor and any subcontractor shall not require any labor or mechanic employed in performance of this Contract to work in surroundings or other working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under Construction Safety and Health Hazards Title 29, Code of Federal Regulations, Part 1926.

29. **PUBLIC UTILITIES**

Contractor shall contact all utility companies prior to start of construction so that they may adjust their facilities which conflict with the proposed construction.

- (a) Power poles are to be relocated by City of Kirkwood Electric Department, Southwestern Bell Telephone Company, or Union Electric Company, as the case may be.

- (b) Gas valve boxes and drips will be adjusted to grade by Laclede Gas Company, but the Contractor shall see that they are so maintained until final completion of the job.
- (c) The Contractor shall adjust water house service curb boxes to proper final grade and so maintain them until final completion of the project.
- (d) Cost of adjusting water boxes and of maintaining both gas and water boxes at proper final grade during the construction period shall be included in the unit prices bid for other items.
- (e) It is understood and agreed that the Contractor has considered in his bid all of the permanent and temporary utility appurtenances in their present or relocated positions whether or not shown on the plans and that no additional compensation will be allowed for any delays, inconvenience, or damage sustained by him due to any interference from the said utility appurtenances or the operation of moving them.
- (f) The Contractor shall use every precaution necessary to prevent damage to all public and private utility wires, lines, pipes, poles, cables, and conduits within the right-of-way. The Contractor shall be responsible for all damage to any utility facility due directly to his operations regardless of location; and he shall repair and replace as necessary any such damaged facility or make payments to the Owner for repair or replacement.
- (g) When the failure of the Owners of utility facilities to cooperate and coordinate their work with that of the Contractor results in actual delays to the Contractor in the over-all completion of his work, such delay will be considered in the date specified for completion, provided the Contractor notifies the Engineer in writing of the delay at the time it occurs.

30. **CONTRACTOR AND SUBCONTRACTOR INSURANCE**

The Contractor shall not commence work under this Contract unless he has obtained the insurance required under this paragraph, and such insurance has been approved by the Owner, nor shall the Contractor permit any subcontractor to commence work on his subcontract until the insurance required of the subcontractor has been so obtained and approved.

(a) Workman's Compensation

The Contractor shall furnish evidence to the City that, with respect to the operations he performs, he carries Workmen's Compensation Insurance, in addition to Employer's Liability Insurance.

(b) Contractor's Bodily Injury Liability and Property Damage

The Contractor shall furnish evidence to the City that, with respect to the operations he performed, he carries regular Contractor's Bodily Injury Liability Insurance providing for a limit of not less than \$1,000,000 for all damages arising out of bodily injuries to or death of one person, and, subject to that limit for each person, a total limit of \$1,000,000 for all damages arising out of bodily injuries to or death of two or more persons in any one accident, and regular Contractor's Property Damage Liability Insurance providing for a limit of not less than \$1,000,000 for all damages arising out of injury to or destruction of property in any one accident, and, subject to that limit per accident, a total or aggregate limit of \$1,000,000 for all damages arising out of injury to or destruction of property during the policy period.

Policy requirements shall be such that insurance provided in compliance with Contractor's Bodily Injury and Property Damage Liability Insurance shall cover liability of the Contractor for damage because of bodily injury to or death of persons and injury to or destruction of property which may be suffered by persons other than his own employees as a result of the negligence of the Contractor in performing the work covered by his Contract. Policy requirements shall also be such that insurance provided in compliance with Contractor's Property Damage Liability Insurance shall include liability of the Contractor for damage to or destruction of property which may be suffered by persons other than his own employees as a result of blasting operations, tunneling, or similar underground work, and demolition operations of the Contractor in performing the work covered by his Contract. Explosion, collapse, and underground insurance with limits of not less than \$1,000,000 bodily injury and \$1,000,000 property damage is required from contractors or subcontractors who are involved in this type of work under this contract.

If any part of the work is sublet, similar insurance shall be provided by or in behalf of the subcontractors to cover their operations.

If the Contractor elects to provide single limit coverages, the limit shall not be less than \$1,000,000 for bodily injury or death and \$1,000,000 for damages arising out of injury to or destruction of property. If he elects to provide single limit coverage for combined damages arising out of bodily injury or death and injury to or destruction of property, the limit shall not be less than \$1,000,000.

(c) Insurance With Other Than Missouri Companies

Any insurance policy required as specified hereinbefore, if written by an insurance company organized in a state other than Missouri, shall be countersigned by a Missouri resident agent of such company. Any certificate or other evidence of insurance, submitted to the City, shall be in a form acceptable

to the City. In the case of policies written by companies organized in a state other than Missouri, the certificate of insurance, or other evidence submitted, shall be countersigned by a Missouri resident agent.

(d) Certificate of Insurance

All insurance hereinbefore specified shall be carried until all work required to be performed under the terms of the Contract is satisfactorily completed as evidenced by the formal acceptance by the Council.

A certificate of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the work. These certificates shall contain a provision that coverages afforded under the policies will not be canceled until at least thirty days prior written notice has been given to the Owner. The certificate shall name the City of Kirkwood as an additional insured.

31. **PERSONAL LIABILITY OF PUBLIC OFFICIALS**

The Contractor and its surety shall indemnify and save the Owner and all of its officers, engineers, representatives, agents, and employees harmless from all suits, actions, including costs of defense, or claims of any character, name, and description brought for or on account of any injuries or damages received or sustained by any persons or property, by or from the Contractor, or by or in consequence of any neglect in safeguarding the work, or through the use of unacceptable materials in constructing the roadway, or by or on account of any claims or amounts recovered from any infringement of patent, trademark, or copyright, or from any claims or amounts arising or recovered under the Workmen's Compensation Law or any other law, bylaw, ordinance, order, or decree. The Owner may retain from any monies due or to become due to the Contractor such sum or sums as shall be deemed necessary to protect the Owner's interest until such suits, action or actions, claim or claims for injuries or damages as aforesaid shall have been settled and suitable evidence to that effect furnished to the Owner.

32. **HANDICAPPED ACCESSIBILITY**

All buildings, structures, sidewalks, curbs, and facilities shall be designed and constructed for handicapped accessibility in strict accordance with State and Federal statutes.

33. **MISSOURI PREVAILING HOURLY WAGE RATES**

- (a) The proposal for this Contract shall be based upon the required payment by the Contractor for wages for each craft or type of workmen required to execute the Contract as determined by the Department of Labor and Industrial Relations of Missouri, pursuant to Section 290.262.9, RSMo 1994. A schedule of such prevailing hourly rate of wages as determined by the Department of Labor and Industrial Relations of Missouri, pursuant to said statutory provisions is attached hereto and made a part of this Contract.
- (b) The principal Contractor and all subcontractors shall comply in all respects with House Substitute for House Bill No. 294, as enacted by the 69th General Assembly and which became effective August 29, 1957, and embodied into the

Revised Statutes of Missouri, as Section 290.262.9, Revised Statutes of Missouri, 1994.

- (c) The Contractor and each subcontractor shall keep an accurate record showing the names and occupations of all workmen employed by him, together with the actual wages paid to each workman, which shall be open to inspection at all reasonable hours by the representative of the Department of Labor and Industrial Relations of Missouri and the Owner.
- (d) The aforesaid prevailing hourly rate of wages is subject to change by the Department of Labor and Industrial Relations of Missouri or by court decision as provided by law during the life of the Contract, and such change shall not be the basis of any claim by the Contractor against the Owner nor will deduction or claim be made by the Owner against sums due the Contractor by reason of any such change.
- (e) Upon completion of the Contract, the Contractor shall submit to the Engineer an affidavit stating that he has fully complied with the Missouri Prevailing Wage Law.
- (f) The Contractor shall forfeit as liquidated damages to the Owner Ten Dollars for each workman employed by the Contractor or any of his subcontractors, for each calendar day, or portion thereof, if such workman is paid less than the prevailing hourly rate of wages for that type of workman or craft for work performed under this Contract.
- (g) The Contractor shall submit certified copies of their payrolls to the City of Kirkwood. The payrolls shall be submitted weekly on Payroll Form WH-347 or other form approved by the City Engineer.

34. **EXCESSIVE UNEMPLOYMENT**

Only Missouri laborers and laborers from nonrestrictive states are allowed by law to be employed on Missouri's public works projects when the unemployment rate exceeds 5% for two consecutive months. Once the notice of excessive unemployment has been posted it will remain in effect until notification of reduced unemployment has been received.

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

**Excessive Unemployment Notice currently in Effect**   X   Yes        No