

ADDITIONAL CONTRACT TERMS

1. DEFINITIONS.

- (a) The "City" is the City of Kirkwood, 212 South Taylor Avenue, Kirkwood, Missouri and includes its designated representatives.
- (b) The "Contractor" is those mentioned as such (contractor, seller, vendor, and supplier) in the Contract and includes their designated representatives.
- © The "Specifications" includes Instruction to Bidders. The Terms and Conditions of Purchase, the Definitions and the technical specifications of the work.
- (d) A "Subcontractor" is a person, firm, or corporation supplying labor or materials, or only labor for work at the site of the project for, and under separate contract or agreement with the Contractor.
- (e) The term "Samples" as used, herein includes natural materials, fabricated items, equipment, devices, appliances or parts thereof as called for in the specifications and any other samples as may be required by the City to determine whether the kind, quality, construction, workmanship, finish, color, and other characteristics of the materials, etc., proposed by the Contractor conform to the requirements of the contract documents. Samples approved by the City shall establish the kind, quality, and other required characteristics, and all work shall be in accordance with the approved samples. Samples, when requested, shall be supplied at no cost to the City.
- (f) The term "Minimum" means the City will order this quantity of supplies during the period of the contract at the price bid.
- (g) The term "Maximum" means the City may order this quantity of supplies during the period of this contract and the Bidder should be prepared to supply same at the price bid.
- (h) The term "Representatives of the City" means the Director of Purchasing and the member of his staff, or any representative of the City acting within the limits of his authority.

2. "OR APPROVED EQUAL" CLAUSE. Whenever a material, article or piece of equipment is identified on the plans or in the specifications by reference to manufacture's or vendors' names, trade names, catalogue number, etc., it is intended merely to establish a standard; and, any material, article, or equipment of other manufactures and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed, is, in the opinion of the City, of equal substance and function. Substitute items may be rejected at the discretion of the city of Kirkwood.

3. NOTICE AND SERVICE THEREOF. Any notice to any Contractor from the City relative to any part of this contract will be in writing and considered delivered and the service thereof completed when said notice is posted, by certified or regular mail, to the said Contractor at his last given address, or delivered in per son to said Contractor or his authorized representative on the work.

4. PROVISIONS REQUIRED BY LAW DEEMED INSERTED. Each and every provision of law and clause required by law to be inserted in this contract will be deemed to be inserted herein and the contract will be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract will forthwith be physically amended to make such insertion or correction.

5. TERMINATION OF CONTRACT. The City reserves the right to terminate the contract at any time if any of the provisions of the contract are violated by the Contractor or by any of his subcontractors, in the sole judgment and discretion of the City. In the event of such termination the Contractor shall be liable for any excess cost incurred by the city. If the contract is so terminated, the City may purchase upon such terms and in such manner as the Director of Purchasing may deem appropriate, supplies or services similar to those so terminated, and the Contractor will be liable for excess costs occasioned thereby.

6. UNIFORM COMMERCIAL CODE. This contract is subject to the Uniform Commercial Code and shall be deemed to contain all the provisions required by said Code.

7. CHANGES. THE city may at any time, by written order, without notice to any surety, make changes or additions, within the general scope of this contract in or to drawings, designs, specifications, instructions for work, method of shipment or packing or place of delivery. If any such change causes an increase or decrease in the cost of or in the time required for performance of this Contract or Purchase Order, the Contract shall notify the Director of Purchasing in writing immediately and an appropriate equitable adjustment will be made in the price or time of performance, or both, by written modification of this contract. Any claim by the Contract for such adjustment must be asserted within 30 days or such other period as may be agreed upon in writing by the parties after the Contractor's receipt of notice of the change. Nothing herein contained shall excuse the Contractor from proceeding with the contract as changed.

8. RESPONSIBILITY FOR SUPPLIES. The Contractor shall be responsible for supplies until they are delivered and accepted at the designated delivery point, and the Contractor shall bear all risks for rejected supplies after notice of rejection.

9. NON-DISCRIMINATION IN EMPLOYMENT. In connection with the furnishing of supplies or performance of work under this contract, the Contractor agrees to comply with the Fair Labor Standards Act, Fair Employment Practices, Equal Opportunity Employment Act, and all other applicable Federal and State laws, and further agrees to insert the foregoing provision in all subcontracts awarded hereunder.

10. TAX-EXEMPT. Do not bill taxes: the City is exempt, by law, from Federal excise or state sales taxes.

11. CONTRACT MODIFICATION. The contract expresses the complete agreement of the parties. Any changes, additions or modifications hereto must be in writing and signed by the Director of Purchasing or his authorized representative.

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12. 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.

13. AMERICANS WITH DISABILITIES ACT OF 1990 (ADA). It shall be the responsibility of all bidders to warrant that all goods, services and/or work to be procured and/or under the proposed Contract shall conform to and/or be performed in compliance with all applicable Federal, State, and Local Statutes, Ordinances and Codes including but not limited to the Americans with Disabilities Act of 1990.

Failure to comply in any manner with applicable statutes, ordinances or codes shall result in said Contractor replacing the goods, services and/or work performed in order to effect compliance or in liquidated damages in the amount required to effect compliance with said statutes, ordinances and codes together with any costs associated with collection of said damages.

If you would like to attend the bid opening and require an accommodation due to a disability, please contact the Purchasing Department at 314-822-5853.

14. PERFORMANCE AND PAYMENT BOND. Contractor shall procure and maintain a performance and payment bond (the "Bond") for the benefit of the City of Kirkwood ("City") as required by the laws of the State of Missouri and in an amount not less than 100% of the aggregate amount of the Contract. The Bond shall serve as security for the faithful performance of these Contracts, including maintenance provisions, and for the payments of all persons performing labor and furnishing materials in connection with these Contracts. The premiums on the Bond shall be paid by the Contractor. The Bond shall remain in full force and effect during the life of the Contract and during the term of any warranty required by the specifications and shall be held in the custody of the Director of Purchasing.

Contractor represents, warrants and guaranties, and Contractor shall also furnish to City a certificate of authority or some other evidence as deemed appropriate by Director of Purchasing establishing, that the Bond is from a surety that is: authorized to do business in the State of Missouri, authorized to become surety on the Bonds or obligations of persons or corporations, solvent with paid-up capital of not less than the applicable amount provided by the Laws of Missouri, and, if organized outside the State of Missouri, in compliance with all the provision of Missouri Law relating to insurance companies other than life insurance companies. If, at any time, City shall become dissatisfied with any surety or sureties, or if for any other reason the Bond shall cease to be adequate security for City, contractor shall, within 10 days after notice from the Director of Purchasing, substitute an acceptable Bond (the "Additional Bond") in form and sum and signed by other sureties as may be satisfactory to City. The premiums on the Additional Bond shall be paid by the Contractor. All requirements herein applicable to the Bond shall also be applicable to the Additional Bond. No further partial payments to Contractor shall be deemed due, nor shall be made until the sureties on the Additional Bond shall have qualified.

Contractor shall furnish to City such Bond together with insurance or other documents required by the Contract. The current power of attorney for the persons who sign for any surety company shall be attached to the Bond. The power of attorney shall be sealed and certified with the manual signature of an officer of the surety. A facsimile signature will no be accepted by the Director of Purchasing.

The failure of the Contractor to supply the required Bond along with the evidence of the required insurance coverage and other documents required by the Contract within N/A days after the executed acceptance is received by the Contractor, or within such extended period as the Director of Purchasing may grant, based upon reasons determined sufficient by the Director of Purchasing, shall constitute a default and City may either award the Contract to the next Lowest responsible bidder or readvertise for amount for which a Contract for the work is subsequently executed. If a more favorable bid is received by readvertising, the defaulting Contractor shall have no claim against City for a refund. Because of the difficulty of ascertaining the damages caused to City, said sum shall be considered Liquidated damages and shall not constitute a penalty.

In the event the Contract is for less than \$25,000.00, the Labor and Material Bond is not required under section 107.170 R.S. Mo.

Form No. 55-18 cont.