

# Rolling Meadows Park District

Rolling Meadows, Illinois

October 12, 2016



## Nelson Sports Complex Window System Replacement Project

The Contractor shall provide the entire scope of work within all divisions of the specifications and as shown on the drawings. Where it becomes necessary for the contractor, in order to fulfill this contract, to furnish labor or materials other than that which is generally accepted by the trade agreement of general practice to belong to the particular trade or branches of work that contractor shall sublet same to subcontractor engaged in the type of work involved to the end that there will be not stoppage of work due to violation of trade agreements as to jurisdiction. All subcontractors shall be required to show proof of insurance.

### Project Manual

#### Bid Proposal and Specifications

There will be a Mandatory Pre Bid Meeting held on October 17, 2016 at 10:00 AM at the Nelson Sports Complex, 3900 Owl Drive, Rolling Meadows, Illinois 60008. Bids are due and will be opened and read aloud on October 25, 2016 at 10:00 AM at the Rolling Meadows Park District Administration Office, 3000 Central Road, Rolling Meadows, Illinois 60008.

This project is being financed, in part, with funds from the Illinois Department of Natural Resources, Park and Recreational Facility Construction Grant Program (PARC # 14-075).

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## 1. Invitation to Bid

The Rolling Meadows Park District will receive sealed bids for the Nelson Sports Complex Window System Replacement Project. Bids will be received until exactly 10:00 AM, October 25, 2016 and then publicly opened and read aloud at the administration office of the Rolling Meadows Park District, 3000 Central Road, Rolling Meadows, IL 60008. Bids submitted after the closing time will be returned unopened. No oral or telephone bids and or modifications will be considered.

The Proposed work is called “**Nelson Sports Complex Window System Replacement Project**” located at 3900 Owl Drive, Rolling Meadows, Illinois 60008, within the Rolling Meadows Park District. Each proposal shall be made on the form furnished by the Park District and must be accompanied by a bid bond, bank cashier’s check, cash or certified check for ten percent (10%) of the bid total.

The Rolling Meadows Park District will accept the lowest responsive and responsible bid, and may reject a bid or bids where it determines such rejection to be in the best interest of the Park District. The rejection of a bid or bids shall not result in accrual of any rights, claims or cause of action by the Bidder against the Rolling Meadows Park District. The Park District reserves the right to waive technicalities and irregularities. ***This project is being financed in part, with funds from the Illinois Department of Natural Resources, “Park and Recreational Facility Construction Grant Program” (PARC) Grant Program.***

**The Illinois Prevailing Wage Act applies to this project along with the Davis Bacon Act.** Contractors must pay and require all subcontractors to pay the prevailing rate of wages to all related laborers, workers, and mechanics involved in this project. As established by the Illinois Department of Labor for each craft or type of work needed to execute the contract in accordance with 820 ILCS 130/.01 et seq. Any increases in cost to the contractor due to changes in the prevailing rate of wage during the terms of any contract shall be at the expense of the contractor and not the Park District. The Contractor shall be solely responsible to maintain accurate records as required by the prevailing wage statute. The Contractor shall be solely liable for paying the difference between prevailing wages and any wages actually received by the laborers, workmen and or mechanics engaged in the Work and in every way defend and indemnify the Park District against any claims arising under or related to the payment of wages in accordance with the Prevailing Wage Act.

The Proposal and Contract Documents may be picked up at the Rolling Meadows Park District Administrative Offices located at 3000 Central Road, Rolling Meadows, Illinois 60008, weekdays from 9:00 am until 4:00 pm.

The Rolling Meadows Park District encourages small and minority businesses and women’s business firms to submit bids on all projects they are qualified for. **The Park District also encourages all successful contract bidders to utilize small and minority businesses and women’s businesses as sub-contractors for supplies, equipment, services and construction.**

**There will be a Mandatory Pre Bid meeting at 10:00 AM October 17, 2016 at 3900 Owl Drive, Rolling Meadows, Illinois 60008. Failure to attend this meeting will result in an automatic disqualification of bid.**

**Published: Daily Herald: October 12, 2016**

## **2. Project Identification, Scope and Schedule**

### ➤ Identification and scope of Project

The official name and location of the project shall henceforth be known as:

**Nelson Sports Complex  
Window System Replacement Project  
3900 Owl Drive, Rolling Meadows, Illinois 60008**

The official name and address of the project owner shall henceforth be known as:

**Rolling Meadows Park District  
3000 Central Road  
Rolling Meadows, IL 60008**

The Nelson Sports Complex Window System Replacement Project consists of the following: Window design, ratings and performance should be based from the **Winco 1450 series or compared equal**. Furnish all material and labor to remove existing windows and replace with new aluminum windows. Work to include eighteen (18) mark A openings that are approximately 48" wide by 96" tall, ten (10) mark B openings that are approximately 96" wide by 96" tall, one (1) mark B1 opening that is approximately 96" wide by 96" tall, and one (1) mark C opening that is approximately 58" wide by 66" tall. It is the Contractor's responsibility to review all conditions and to field measure the openings. Contractor will also work with the Park District to remove the existing door in the B1 opening and board up the opening so that the new concrete sill can be poured in preparation for the new windows. All new windows will be installed with aluminum thermally broken receptor system using a subsill that employs weeps and end dams. End dams and fasteners in the subsill must be sealed to create a water tank that prevents water from leaving the system in any other place besides the weep. The receptor system will be installed plumb, level, in a structurally sound manner, and with a minimum of a ¼" gap for the perimeter sealant. Perimeter sealant to be tooled smooth to ensure a sound bond with the masonry opening as well as the aluminum receptor. New windows will be thermally broken aluminum with 1" insulated glass units that are factory glazed, must have a minimum depth of 4", and have a minimum grade of AW-80. All exposed aluminum will be dark bronze anodized. Insulated glass units are to consist of ¼" bronze, tempered outboard lite with a ¼" clear, tempered inboard lite with solarban 60 low "e" coating on the #3 surface. All windows are to

be installed to fully cover the scar from the removal of the existing windows and doors. Aluminum snap trim will be used as needed to cover this scar. Aside from new concrete sill at opening B1, no additional work is planned for window openings. Contractor is to be responsible for removal of existing window treatments and removal / reinstallation of guard rails as needed. Existing windows and any other debris generated must be properly disposed of by the contractor. Building will be in use by Park District employees and residence of the community and the Contractor is responsible for making sure that the work is done safely and that fire lanes and a path of emergency egress is kept open for the public. Contractor is responsible for keeping the work area as tidy as possible and daily cleaning. Contractor will be responsible for securing their tools and material as there is no room in the building for storage. Contractor will protect the existing building construction and any damage to existing building/finishes will be fixed at the sole expense of the Contractor. Contractor is responsible for making sure that the building is protected from the weather at all times and that all window openings are secure when work is complete for the day. Under no circumstances can the building be left unsecured if Contractor does not have personnel on site.

Contractor is responsible for supplying shop drawings, finish samples, and glass samples to Park District within three weeks of being awarded the bid. Contractor will order windows and materials as soon as possible after Park District approves these samples. **50% of the labor hours on the project must be performed by actual residents of Illinois. Article 80 of the FY 10 Budget Implementation (Capital) Act, P.A. 96-37 (HB 2424.)**

➤ Commencement of Work:

Work shall be commenced within ten (10) days of Notice to Proceed, weather permitting. **December 1, 2016**

➤ Final Completion:

**March 1, 2017**

## **Project Schedule**

**Bid Let Date: October 12, 2016**

**Prebid Meeting: October 17, 2016 @ 10:00 AM**

**Bid Due / Opening: October 25, 2016 @ 10:00 AM**

**Commencement of Work: December 1, 2016**

**Completion of Work: March 1, 2017**

### **3. Form Requirements**

1. Contractor Compliance & Certifications Attachment:
  - a. As attached
2. Bid Bond:
  - a. AIA Document A310, latest edition
3. Application and Certificate for Payment:
  - a. AIA Document G702, latest edition, with Continuation Sheet G703
4. Affidavit Payment:
  - a. AIA Document G706, latest edition
5. Labor and Material Payment Bond:
  - a. AIA Document A311, latest edition
6. Performance Bond:
  - a. AIA Document A312, latest edition
7. Waiver Forms:
  - a. Chicago Title Insurance Company.
    - i. "Waiver of Lien-to-Date," pink, Form # F.1722 R5/92.
    - ii. "Final Waiver of Lien," blue, Form # F.3870 R1/89

#### **4. Instruction to Bidders**

##### **1. Bidding and Contract Documents**

Bidding Documents include the Bidding Requirements and the proposed Contract Documents. The Bidding Requirements consist of the Advertisement or Invitation to Bid, Instructions to Bidders, Supplementary Instructions to Bidders, the Bid Form, certifications and other documents required to be submitted with the Bid Form or in connection with the bid, and other sample bidding and contract forms. The proposed Contract Documents consist of the Owner-Contractor Agreement (AIA Form A-101 latest edition as modified by Owner), Conditions of the Contract (General Supplementary and other Conditions), Drawings, Specifications and all Addenda issued to prior to execution of the Contract, and other documents listed in the Agreement and Modifications. Each of the Contract Documents shall be the form of said document as it has been provided or specified by Owner in the Project Manual for use with this Project.

##### **2. Interpretation or Clarification of Bidding or Contract Documents**

Any explanation desired by a Bidder regarding the meaning or interpretation of the Bidding Documents must be requested in writing and with sufficient time allowed for a reply to reach all prospective Bidders before the bid submission date.

Any interpretation made will be in the form of an addendum to the Bidding Documents and will be distributed to all prospective Bidders. Its receipt by the Bidder must be acknowledged in the space provided on the Bid Form or by letter or telegram received before the time set for opening of bids.

##### **3. Conditions Affecting the Work**

Bidders shall visit the site and take such other steps as may be reasonably necessary to ascertain the nature and location of the Work, and the general and local conditions which can affect the Work or the cost thereof. Failure to do so will not relieve a Bidder from responsibility for estimating properly the difficulty or cost of successfully performing the Work, and will not entitle the Bidder to any adjustment in the Contract Time or Contract Sum.

#### 4. Bid Guarantee

A Bid Guarantee is required by the Invitation to Bid in the amount of 10% of the Contract Bid Amount. Failure to furnish a Bid Guarantee in the proper form and amount, by the time set for opening of bids, will render the bid non-responsive and ineligible for acceptance.

A Bid Guarantee shall be in the form of a bid bond or cashiers check made payable to the Owner. Bid Guarantees, other than those stated, will be returned (a) to unsuccessful Bidders as soon as practicable after the award of the Contract, and (b) to the successful Bidder upon its execution and provision of such further Contract Documents required by the Owner.

The successful Bidder, upon being given a written "Notice of Award," will have ten (10) calendar days to provide the required Labor and Material Payment Bond, Performance Bond, and Insurance Policies or certificates for same, and commence the Work. Failure to comply with the conditions set forth in the Contract Documents shall result in the termination of the Contract for default. In such event, the Contractor may be liable for any costs of performing the Work which exceed the amount of its bid, and the Bid Guarantee shall be available toward offsetting such difference.

#### 5. Preparation and Submission of Bids

Before submitting its bid, each Bidder shall examine carefully all of the Bidding Documents and other documents provided to Bidder by Engineer or Owner pertaining to the Work and visit the site to verify conditions under which the Work will be performed.

Submission of a bid will constitute the unqualified representation of the Bidder, and shall be considered presumptive evidence, that: the Bidder has visited and examined the site, and is fully familiar with and has satisfied itself as to the site and the local and other conditions and difficulties under which the Work is to be performed, including without limitation, (i) surface conditions of the site and subsurface conditions readily observable or ascertainable upon the exercise of reasonable diligence and all structures and obstructions thereon and there under, both natural and manmade; (ii) the nature, location, and character of the general area in which the Project is located, including without limitation, its climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and (iii) the quality and quantity of all materials, supplies, tools, equipment, labor, and professional services necessary

to complete the Work in the manner and within the cost and time frame indicated by the Contract Documents; and has correlated the Bidder's personal observations with the requirements of and matters indicated in or by the proposed Contract Documents.

The Bidding Documents, including the Contract Documents, are full and complete; are sufficient to have enable the Bidder to determine the cost of the Work and to construct the Work indicated therein in accordance with applicable laws, regulations, and codes, and otherwise to fulfill all of the Contractor's obligations there under including but not limited to the Contractor's obligation to construct the Work for an amount not in excess of the Contract Sum on or before the date(s) of Substantial and Final Completion; and the omission from the Contract Documents of minor details which ordinarily form a part of first class work and are necessary to the completion of the Work as indicated shall not be cause for any extra cost but shall be included as if specifically mentioned or detailed.

The Bidder has carefully examined the Drawings, Specifications and other Contract Documents and it has no knowledge of any discrepancies, omissions, ambiguities, or conflicts in or between the Contract Documents except those, if any, which have been clarified by the Engineer by Addenda acknowledged in the Bidder's Bid Form.

A Bidder must include in its bid all costs of labor (in accordance with prevailing wage rates as required by law), materials, equipment, supplies, allowances, fees, guarantees, applicable taxes (The **Rolling Meadows Park District** is exempt from State sales taxes and no amount for such taxes should be included in the bid. **The Rolling Meadows Park District will provide the Contractor with its tax exemption number for use with this project only**), insurance and contingencies, with overhead and profit necessary to produce a complete project, without further cost to the Owner.

No compensation will be allowed by reason of any difficulties which the Bidder could have discovered or reasonably should have been known to a Contractor experienced in the type of Work called for in the Contract Documents.

All bids must be made upon the Bid Form furnished by the Owner, attached hereto, and should give the amounts bid for Work, in words and numbers, and must be signed and acknowledged by the Bidder in order to insure consideration, the Bid Form should be enclosed in the envelope provided or in

an envelope marked "Sealed Bid – **Nelson Sports Complex Window System Replacement Project** " showing the name and return address of the sender and addressed to: **Rolling Meadows Park District, 3000 Central Road., Rolling Meadows, IL 60008**. Bids must be sealed, marked and addressed as directed above. Failure to do so may result in a premature opening of, or a failure to open, such bid.

The bid submitted must not contain erasures, interlineations, or other corrections unless each correction is suitably authenticated by affixing in the margin immediately opposite the correction the surname or surnames of the person or persons signing the bid.

Modifications of bids already submitted will be considered if received at the office designated in the Invitation to Bid by the time set for opening of bids. Faxed modifications will be considered, if in the required form, but should not reveal the amount of the original or revised bid. Unless specifically requested or allowed in the bid documents, alternate bids will not be considered.

The bid submitted must be accompanied by the Contractor Compliance & Certifications Attachment. Any bid submitted without this attachment will be rejected as non-responsive.

## 6. Prices

The prices are to include the furnishing of all materials, equipment, supplies, tools, scaffolding, transportation, insurances, bonds, warranties, and all other facilities, and the performance of all labor and services necessary for the proper and timely completion of the Work in accordance with the Bidding Documents.

## 7. Time Schedule

The timely execution of any project is extremely important. As timing is of importance to us, we ask that you **submit critical path method scheduling information along with your bid**. Failure to supply this information may be considered cause for rejecting your bid. **Provide estimated lead times for all long lead items in bid proposal.**

8. Late Bids and Modifications or Withdrawals

Bids and modifications or withdrawals thereof received at the office designated in the Invitation to Bid after the exact time set for opening of bids will not be considered.

9. Withdrawal of Bids

Bids may be withdrawn by written or faxed request received from Bidders prior to the time set for opening of bids.

10. Public Opening of Bids

Bids will be publicly opened at the time set for opening in the Invitation to Bid. Their content will be made public for the information of Bidders and others interested, who may be present either in person or by representative.

11. Award of Contract

It is the intent of the Owner to award a Contract to the lowest responsible Bidder provided the Bid has been submitted in accordance with the requirements of the Bidding Documents and does not exceed the funds available. The Owner shall have the right to waive informalities and irregularities in a Bid received and to accept the Bid which, in the Owner's judgment, is in the Owner's own best interest. In determining responsibility of a Bidder, the Owner may consider the following factors among others, the experience of the Bidder on projects of similar size, kind and scope; the Bidder's level of performance on other projects; the size and experience of the Bidder's workforce, Bidder's commitments on other projects which will run concurrently with this Project; Bidder's references; claims against or disputes involving the bidder on other Projects, including labor disputes; cost overruns or delays in completion of other projects, and such other matters as the Owner determines relevant to successful completion of this Project.

The Board may reject any or all bids without disclosure of a reason. The failure to make such a disclosure shall not result in accrual of any right, claim, or cause of action by any Bidder against the **Rolling Meadows Park District**.

## 12. Contract and Insurance

The accepted Bidder shall enter into a written contract, provide the Owner with a Labor and Material Payment Bond and Performance Bond in an amount not less than 100% of the Contract Sum, copies of Workman's Compensation and Comprehensive General Liability Insurance Policies, within ten (10) calendar days of the written "Notice to Proceed" and prior to the commencement of work.

All Contractors must comply with the provisions of all applicable Federal, State and Local laws, including without limitation, laws pertaining to the payment of prevailing rates of wages, the provisions of the Illinois Human Rights Act (Act) dealing with equal employment opportunities (Section 2-105, 775 ILCS 5/2-105) including equality of employment opportunity and the regulations of the Department of Human Rights of the State of Illinois and also must provide for the adoption and implementation of written Sexual Harassment Policies. The Contract with the Bidder will provide for this requirement. The statutory provisions setting forth what such policies shall include as a minimum under the Act are on file with the District and available to the Contractor upon request.

## 13. Postponement of Date for Opening Bids

The Owner reserves the right to postpone the date of presentation and opening of bids and will give Faxed notice of any such postponement to each interested party.

## 14. Post Bid Information

A Bidder to whom award of a Contract is under consideration shall submit to the Engineer or Owner upon request unless such information has been previously submitted with the Bidder's Bid Form:

- a. A properly executed AIA Document A305 latest edition, Contractor's Qualification Statement,
- b. A list of lawsuits in which the Bidder was/is a named plaintiff or defendant within the last four (4) years and an explanation of the nature and status or outcome of each such lawsuit.
- c. A designation of the Work to be performed with the Bidder's own forces;

- d. Names of the manufacturers, products, and the suppliers of principal items or systems of materials and equipment proposed for the Work;
- e. Names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for the principal portions of the Work using the form included in the Project Manual;
- f. Project references containing such information as required by the Engineer or Owner

The Bidder will be required to establish to the satisfaction of the Engineer and Owner the reliability and responsibility of the persons or entities proposed to furnish and perform the Work described in the Bidding Documents.

## 5. Contractor Compliance and Certifications

**Note: The following certifications form an integral part of the Agreement between the Owner and Contractor. Breach by Contractor of any of the certifications may result in immediate termination of the Contractor's services by Owner.**

THE UNDERSIGNED CONTRACTOR ("CONTRACTOR") HEREBY CERTIFIES, AFFIRMS AND AGREES AS FOLLOWS:

- A. Contractor has carefully read and understands the contents, purpose and legal effect of this document as stated above and hereafter in this document. The certifications contained herein are true, complete and correct in all respects.
- B. Contractor shall abide by and comply with all applicable Federal, State and local laws and rules and regulations including without limitation those relating to 1) fair employment practices, affirmative action and prohibiting discrimination in employment; 2) workers' compensation; 3) workplace safety; 4) wages and claims of laborers, mechanics and other workers, agents, or servants in any manner employed in connection with contracts involving public funds or the development or construction of public works, buildings or facilities; and 5) steel products procurement.
- C. All contracts for this Project are subject to the provisions of the Illinois Prevailing Wage Act (820 ILCS 130/0.01 *et seq.*), providing for the payment of the prevailing rate of wage to all laborers, workmen and mechanics engaged in the Work. Contractor shall pay prevailing rates of wages in accordance with the wage determination included with the Contract Documents and any subsequent determinations issued by the Illinois Department of Labor which shall supersede

the determination included in the Contract Documents, all in accordance with applicable law. Contractor shall be responsible for determining the applicable prevailing wage rates at the time of bid submission and at the time of performance of the Work. Failure of Contractor to make such determination shall not relieve it of its obligations in accordance with the Contract Documents. Contractor shall also comply with all other requirements of the Act including without limitation those pertaining to inclusion of required language in subcontracts, job site posting, maintenance and submission of certified payroll records and inspection of records. Contractor is not barred from entering into public contracts under Section 11a of the Illinois Prevailing Wage Act due to its having been found to have disregarded its obligations under the Act. In accordance with 820 ILCS 130/5, The Contractor and each subcontractor shall make and keep, for a period of not less than 3 years, records of all laborers, mechanics, and other workers employed by them on the Project; the records shall include each worker's name, address, telephone number when available, social security number, classification or classifications, the hourly wages paid in each period, the number of hours worked each day, and the starting and ending times of work each day. The Contractor and each subcontractor shall submit monthly, in person, by mail, or electronically a certified payroll to the Rolling Meadows Park District. The certified payroll shall consist of a complete copy of the foregoing records but may exclude the starting and ending times of work each day. The certified payroll shall be accompanied by a statement signed by the contractor or subcontractor which avers that such records are true and accurate; the hourly rate paid to each worker is not less than the general prevailing rate of hourly wages required; and the contractor or subcontractor is aware that filing a certified payroll that he or she knows to be false is a Class B misdemeanor. Upon 2 business days' notice, the contractor and each subcontractor shall make available for inspection the records to the **Rolling Meadows Park District**, its officers and agents, and to the Director of Labor and his deputies and agents at all reasonable hours at a location within this State. The Contractor and each subcontractor shall permit his/her employees to be interviewed on the job, during working hours, by compliance investigations of the Department of the Department of Labor.

- D. To the best of Contractor's knowledge, no officer or employee of Contractor has been convicted of bribery or attempting to bribe an officer or employee of the State of Illinois, or any unit of local government, nor has any officer or employee made an admission of guilt of such conduct which is a matter of record.
- E. Contractor is barred from bidding on or entering into public contracts due to having been convicted of bid-rigging or bid rotating under paragraphs 33E-3 or 33E-4 of the Illinois Criminal Code. Contractor also certifies that no officers or

employees of the Contractor have been so convicted and that Contractor is not the successor company or a new company created by the officers or owners of one so convicted. Contractor further certifies that any such conviction occurring after the date of this certification will be reported to the Owner, immediately in writing, if it occurs during the bidding process, or otherwise prior to entering into the Contract therewith.

- F. Pursuant to the Illinois Human Rights Act (775 ILCS 5/2-105), Contractor has a written sexual harassment policy that includes, at a minimum, the following information: (i) a statement on the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment utilizing examples; (iv) the Contractor's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights and the Human Rights Commission and directions on how to contact both; and (vi) protection against retaliation as provided by Section 6-101 of the Illinois Human Rights Act. Contractor further certifies that such policy shall remain in full force and effect. A copy of the policy shall be provided to the Illinois Department of Human Rights upon request.
- G. Contractor shall abide by the "Employment of Illinois Workers on Public Works Act" which stipulates that whenever there is a period of excessive unemployment in Illinois, defined as any month immediately following two (2) consecutive calendar months during which the level of unemployment in Illinois exceeds five percent (5%) as measured by the U.S. Bureau of Labor Statistics in its monthly publication of employment and unemployment figures, the Contractor shall employ only Illinois laborers unless otherwise exempted as so stated in the Act. ("Illinois laborer" means any person who has resided in Illinois for at least 30 days and intends to become or remain an Illinois resident). Other laborers may be used if Illinois laborers are not available or are incapable of performing the particular type of work involved if so certified by the Contractor and approved by the Engineer.
- H. (i) Contractor's bid proposal was made without any connection or common interest in the profits anticipated to be derived from the Contract by Contractor with any other persons submitting any bid or proposal for the Contract; (ii) the Contract terms are in all respects fair and the Contract will be entered into by Contractor without collusion or fraud; and (iii) no official, officer or employee of the Owner has any direct or indirect financial interest in Contractor's bid proposal or in Contractor.
- I. Contractor knows and understands the Equal Employment Opportunity Clause administrated by the Illinois Department of Human Rights, which is incorporated herein by this reference, and agrees to comply with the provisions thereof.

Contractor further certifies that Contractor is an "equal opportunity employer" as defined by Section 2000 (e) of Chapter 21, Title 42 of the United States Code Annotated and Executive Orders #11246 and #11375 as amended, which are incorporated herein by this reference.

- J. Neither Contractor nor any substantially owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the U.S. Export Administration Act of 1979 or the regulations of the U.S. Department of Commerce promulgated under that Act.
- K. Contractor is not barred from contracting with the Owner because of any delinquency in the payment of any tax administered by the Illinois Department of Revenue, unless it is being contested. Contractor further certifies that it understands that making a false statement regarding delinquency in taxes is a Class A. misdemeanor and, in addition, voids the Contract and allows the Owner, a municipal entity, to recover in a civil action all amounts paid to the Contractor.
- L. If Contractor has 25 or more employees at the time of letting of the Contract, Contractor knows, understands and acknowledges its obligations under the Illinois Drug Free Workplace Act (30 ILCS 580/1 *et seq.*) and certifies that it will provide a drug-free workplace by taking the actions required under, and otherwise implementing on a continuing basis, Section 3 of the Drug Free Workplace Act. Contractor further certifies that it has not been debarred and is not ineligible for award of this Contract as the result of a violation of the Illinois Drug Free Workplace Act. Contractor knows, understands and acknowledges its obligations under the Substance Abuse Prevention on Public Works Act, 820 ILCS 265/1 *et seq.* A true and complete copy of Contractor's Substance Abuse Prevention Program Certification is attached to and made a part of this Contractor Compliance and Certification Attachment.
- M. Contractor shall furnish and provide evidence of, general liability insurance in accordance with the attached "Insurance and Indemnification Requirements" and shall indemnify, protect, defend at its own cost, and hold harmless the Owner and the Illinois Department of Natural Resources from and against claims for injuries/damages to, and loss or destruction of person or property, relating directly or indirectly to, or arising out of, through and, or by virtue of the Contractor's activities or the construction and development of the Project, in accordance with the attached Insurance and Indemnification Requirements.



## 6. Prevailing Wages

Each CONTRACTOR or Subcontractor performing Work on this project shall comply in all respects with all laws governing the employment of labor, Social Security, and Unemployment Insurance of both the State and Federal government. There shall be paid each employee engaged in Work under this Contract at the site of the Project, no less than the minimum wage for the classifications of labor employed in compliance with 820ILCS 130/1 et seq., as now existing or hereafter amended. A copy of "General Prevailing Hourly Rates" is hereinafter included.

In accordance with 820 ILCS 130/5, The Contractor and each subcontractor shall make and keep, for a period of not less than 3 years, records of all laborers, mechanics, and other workers employed by them on the Project; the records shall include each worker's name, address, telephone number when available, social security number, classification or classifications, the hourly wages paid in each period, the number of hours worked each day, and the starting and ending times of work each day.

The Contractor and each subcontractor shall submit monthly, in person, by mail, or electronically a certified payroll to the **Rolling Meadows Park District**. The certified payroll shall consist of a complete copy of the records. The certified payroll shall be accompanied by a statement signed by a duly authorized officer of the contractor or subcontractor, as applicable, which affirmatively declares that:

- (i) such records are true and accurate;
- (ii) the hourly rate paid to each worker is not less than the general prevailing rate of hourly wages required by the Prevailing Wage Act; and
- (iii) the officer signing the statement is aware that filing a certified payroll that he or she knows to be false is a Class B misdemeanor.

Upon 2 business days' notice, the contractor and each subcontractor shall make available for inspection the records to the **Rolling Meadows Park District**, its officers and agents, and to the Director of Labor and his deputies and agents at all reasonable hours at a location within this State. The Contractor and each subcontractor shall permit his/her employees to be interviewed on the job, during working hours, by compliance investigations of the Department of the Department of Labor.

## 7. Substance Abuse Prevention Program Certification

The Substance Abuse Prevention on Public Works Projects Act, 820 ILCS 265/1 *et seq.*, ("Act") prohibits any employee of the contractor or any subcontractor on a public works project to use, possess or be under the influence of a drug or alcohol, as those terms are defined in the Act, while performing work on the project. The contractor/subcontractor **[circle one]**, by its undersigned representative, hereby certifies and represents to the **Rolling Meadows Park District** that **[contractor/subcontractor must complete either Part A or Part B below]**:

A. The contractor/subcontractor **[circle one]** has in place for all employees not covered by a \_\_\_\_\_ collective bargaining agreement that deals with the subject of the Act a written substance abuse prevention program, a true and correct copy of which is attached to this certification, which meets or exceeds the requirements of the Substance Abuse Prevention on Public Works Projects Act, 820 ILCS 265/1 *et seq.* **[Contractor/subcontractor must attach a copy of its substance abuse prevention program to this Certification.]**

\_\_\_\_\_  
Name of Contractor/Subcontractor (print or type)

\_\_\_\_\_  
Name and Title of Authorized Representative (print or type)

Dated:\_\_\_\_\_

Signature of Authorized Representative\_\_\_\_\_

B. The contractor/subcontractor **[circle one]** has one or more collective bargaining agreements in effect for all of its employees that deal with the subject matter of the Substance Abuse Prevention on Public Works Projects Act, 820 ILCS 265/1 *et seq.*

\_\_\_\_\_  
Name of Contractor/Subcontractor (print or type)

\_\_\_\_\_  
Name and Title of Authorized Representative (print or type)

Dated:\_\_\_\_\_

Signature of Authorized Representative\_\_\_\_\_

## 8. Sexual Harassment Policy Certification

As part of his/her proposal on the enclosed Contract, the undersigned hereby certifies that Bidder has in full force and effect a written sexual harassment policy in accordance with the Illinois Human Rights Act (775 ILCS 5/1-101 *et seq.*), including at least the following:

1. a statement on the illegality of sexual harassment;
2. a description of sexual harassment under Illinois Law;
3. a description of sexual harassment, utilizing examples;
4. an internal complaint process, including penalties;
5. the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights ("Department") and the Illinois Human Rights Commission ("Commission");
6. directions on how to contact the Department and the Commission; and
7. protection against retaliation, as provided by Section 6-101 of the Act.

Bidder further certifies that such policy shall remain in full force and effect throughout the term of the Contract.

Bidder:

---

(Print Name of Bidder)

Signed:

---

(Signature of Authorized Officer)

Printed Name of Signatory:

---

As Its:

---

(Title of Signatory)

Dated: \_\_\_\_\_, 20\_\_\_\_

STATE OF ILLINOIS            )  
  ) SS  
COUNTY OF COOK            )

I, the undersigned, a notary public in and for the State and County aforesaid, hereby certify that

\_\_\_\_\_ appeared before me this day in person and, being first duly sworn on oath, acknowledged that he/she is authorized to act on behalf of Bidder, and that he/she executed the foregoing bid as his/her free act and deed and as the act and deed of Bidder.

Dated: \_\_\_\_\_, 20\_\_\_\_

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

[Notary Seal]

## **9. Equal Employment Opportunity**

The Contractor and all subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, sex, age, national origin or ancestry, citizenship status, disability, marital status, unfavorable discharge from military service, or sexual orientation.

The Contractor shall take affirmative action to ensure that all applicants are employed, and that employees are equally treated during employment. Such action shall include, but not be limited to the following:

1. Employment, upgrading, demotion and transfer.
2. Recruitment or recruitment advertising.
3. Layoff or termination.
4. Rates of pay or other forms of compensation.
5. Selection for training including apprenticeship.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

The Contractor and all subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf provide language notifying applicants that the Contractor is an equal opportunity employer and does not unlawfully discriminate in its employment practices.

Comply with all terms of the Equal Employment Opportunity Clause of the Illinois Fair Employment Practices Commission.

## **10. Insurance Requirements**

Contractor shall obtain insurance of the types and in the amounts listed below.

### **A. Commercial General and Umbrella Liability Insurance**

Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location.

CGL insurance shall be written on Insurance Services Office (ISO)) occurrence form CG 00 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

Owner, its **Park Board Commissioners**, officers and employees, and the Project Engineer, its directors, officers and employees shall be included as additional insured under the CGL, using ISO additional insured endorsement CG 20 10 or a substitute providing equivalent coverage, and under the commercial umbrella if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to any additional insured entity or person.

There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage.

If Owner has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 10 under the Commercial General and Umbrella Liability Insurance required in this Contract, the Contractor waives all rights against Owner and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Contractor's Work.

## **B. Continuing Completed Operations Liability Insurance**

Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella liability insurance with a limit of not less than \$2,000,000 each occurrence for at least three years following substantial completion of the work.

Continuing CGL insurance shall be written on ISO occurrence form CG 00 01 10 93, or substitute form providing equivalent coverage, and shall, at minimum, cover liability arising from products-completed operations and liability assumed under an insured contract.

Continuing CCL insurance shall have a products-completed operations aggregate of at least two times its each occurrence limit.

Continuing commercial umbrella coverage, if any, shall include liability coverage for damage to the insured's completed work; equivalent to that provided under ISO form CG 00 01.

**C. Business Auto and Umbrella Liability Insurance**

Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$2,000,000 each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

**D. Workers Compensation Insurance**

Contractor shall maintain workers compensation as required by statute and employers liability insurance. The commercial umbrella and or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

**E. General Insurance Provisions**

**Evidence of Insurance**

No less than 15 days prior to beginning work, Contractor shall furnish Owner with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All certificates shall provide for 30 days' written notice to Owner prior to the cancellation or material change of any insurance referred to therein. Written notice to Owner shall be by certified mail, return receipt requested.

Failure of Owner to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of Owner to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

Owner shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Owner.

Failure to maintain the required insurance may result in termination of this Contract at Owner's option.

With respect to insurance maintained after final payment in compliance with a requirement above, an additional certificate(s) evidencing such coverage shall be promptly provided to Owner whenever requested.

Contractor shall provide certified copies of all insurance policies required above within 10 days of Owners' written request for said copies.

### **Acceptability of Insurers**

For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Owner has the right to reject insurance written by an insurer it deems unacceptable.

### **Cross-Liability Coverage**

If Contractor's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

### **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to the Owner. At the option of the Owner, the Contractor may be asked to eliminate such deductibles or self-insured retentions as respects the Owner, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

### **Subcontractors**

Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified above. When requested by the Owner, Contractor shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

## **F. Indemnification**

Contractor shall protect, indemnify, hold and save harmless and defend the Owner, its officers, officials, employees, volunteers, and agents against and from any and all claims, costs, causes, actions and expenses, including but not limited to legal fees (attorneys, paralegal and court cost) incurred by reason of a lawsuit or claim for compensation arising

in favor of any person, including the employees or officers or independent contractors or subcontractors of the Contractor or Owner, on account of personal injuries or death, or damages to property occurring, growing out of incident to, or resulting directly or indirectly from any act or omission of Contractor, whether such loss, damage, injury or liability is contributed to by the negligence of the Owner or by premises themselves or any equipment thereon whether latent or patent, or from other causes whatsoever, except that Contractor shall have no liability for damages or the costs incident thereto caused by the sole negligence of the Owner. Contractor shall similarly protect, indemnify, hold and save harmless and defend the Owner, its officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses, including but not limited to or incurred by reason of Contractor's breach of its obligations under its contracts with the Owner for the provision for transportation services.

## **11. Law Compliance**

All project construction Work shall comply with all Federal, State and Local Laws and Regulations, and with all Local Ordinances and Rules pertaining to this Work. Such Laws, Regulations, Ordinances and Rules shall be considered a part of these Specifications.

All successful Contractors must comply with the provisions of all applicable Federal, State and Local laws, including without limitation, laws pertaining to the payment of prevailing rates of wages, the provisions of the Illinois Human Rights Act (Act) dealing with equal employment opportunities (Section 2-105, 775 ILCS 5/2-105) including equality of employment opportunity and the regulations of the Department of Human Rights of the State of Illinois and also must provide for the adoption and implementation of written Sexual Harassment Policies. The Contract with the Bidder will provide for this requirement. The statutory provisions setting forth what such policies shall include as a minimum under the Act are on file with the **Rolling Meadows Park District** and are available to the Contractor upon request.

**12. Non-collusion Affidavit to be executed by Bidder and Submitted With Bid for The Rolling Meadows Park District**

STATE OF ILLINOIS )  
 )ss  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, being first duly sworn, deposes and says  
(name)

that he or she is \_\_\_\_\_ of  
(position title)

(the bidder)

the party making the foregoing bid; that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid

are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

DATED: \_\_\_\_\_ By \_\_\_\_\_  
(Person signing for bidder)

Subscribed and sworn to before me on

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

(Notary Seal)

### 13. Contractor References

CONTRACTOR \_\_\_\_\_

CONTACT \_\_\_\_\_ SIGNATURE \_\_\_\_\_

PHONE \_\_\_\_\_ FAX \_\_\_\_\_

ADDRESS \_\_\_\_\_

Contractor References:

Please include three references with which the Contractor has completed similar work in the past three years. List name of owner, contact person, address and **phone number**.

1. Project Description \_\_\_\_\_

Address \_\_\_\_\_

Contract Amount \_\_\_\_\_ owner \_\_\_\_\_

Contact Person \_\_\_\_\_ Phone \_\_\_\_\_

2. Project Description \_\_\_\_\_

Address \_\_\_\_\_

Contract Amount \_\_\_\_\_ owner \_\_\_\_\_

Contact Person \_\_\_\_\_ Phone \_\_\_\_\_

3. Project Description \_\_\_\_\_

Address \_\_\_\_\_

Contract Amount \_\_\_\_\_ owner \_\_\_\_\_

Contact Person \_\_\_\_\_ Phone \_\_\_\_\_

## **14. General Conditions Rolling Meadows Park District**

### **Article 1 - General Provisions**

#### 1.1 Basic Definitions

##### 1.1.1 The Contract Documents

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications (Written amendment signed by both parties, Change Order or Construction Change Directive) issued after execution of the Contract.

##### 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representation or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Engineer and Contractor, (2) between the Owner and a Subcontractor, (3) between the Owner and Engineer or (4) between any persons or entities other than the Owner and Contractor. The Engineer shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Engineer's duties.

##### 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

##### 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

##### 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details schedules and diagrams.

#### 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### 1.1.7 The Project Manual

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

#### 1.1.8 The Bidder

“Bidder” refers to and indicates any individual, firm or corporation submitting an approved proposal for work contemplated.

1.1.9 “Contractor” refers to person, firm or corporation with whom the contract is made by the Owner. Only Prime Contractors are recognized as a part of the contract and where the term “Contractor” is used, the Prime Contractor or Prime Contractors is referred to. The term “Contractor” as used herein shall mean person, firm or corporation named in the Agreement who will perform the work described herein. Where subcontractors are referred to, it has been for convenience only. Nothing contained in this contract shall create any contractual relation between any subcontractor and the Owner.

1.1.10 “Subcontractor” refers to a person, firm or corporation other than an employee of the Contractor, who contracts with the Contractor to furnish labor or materials at the site of the work.

1.1.11 “Other” refers to parties other than a Prime Contractor, his subcontractors, or suppliers.

1.1.12 “Provide” shall be interpreted as meaning “Furnish and install, complete in place, ready to use or operation, in accordance with the Terms of the Contract Documents.

1.1.13 “Specifications” refers to and indicates description, provisions and requirements, contained herein, together with all written agreements made or to be made, pertaining to qualities of materials to be furnished under the Agreement.

1.1.14 “Drawings” refers to and indicates all drawings or reproduction of drawings pertaining to construction of the work contemplated, and its accessories. Words “As required”, “As directed”, “As permitted”, and words of like import, mean that requirements, direction or permission of the Engineer are intended; similarly, the words “approved”, “acceptable”, “satisfactory”, or words of like import shall mean “approved by”, “acceptable to” or “satisfactory to” the Engineer.

1.1.15 Words “necessary”, “proper” or words of like imports as used with respect to extent, conduct or character of work specified shall mean that work shall be carried to extent, must be conducted in a manner or be of a character which is “necessary” or

“proper” under the circumstances, in the opinion of the Engineer. The Engineer’s judgment in such matters shall be considered final.

1.1.16 “Substantial Completion” means the date that all of the Work has been completed to the point where it can be occupied and used for all purposes intended by Owner and has been accepted by Owner and Engineer as such, subject only to minor Punch List Items, and Owner has received all required occupancy permits.

1.1.17 “Punch List Items” shall mean and shall be limited to uncompleted items of the Work (a) that do not interfere with the use and occupancy of any area of the Site for its intended purpose and (b) that, as a group, are capable of being completed by the Contractor within thirty (30) days of issuance of any Punch List. The “Punch List” is the list containing the Punch list items.

1.1.18 “Final Completion” means the date the Contract has been fully performed, all the Work has been completed and a final Certificate for Payment approved by the Owner has been issued by the Engineer.

## 1.2 Correlation and Intent of the Contract Documents

1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

1.2.2 Organization of the Specifications into divisions, sections and articles, and 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.

1.2.3 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.4 Figured dimensions and marked data shall take precedence over scale measurements and details shall take precedence over smaller scale general Drawings. Discrepancies or ambiguities found in Drawings or Specifications shall at once be reported to the Engineer for clarification.

1.2.5 Certain reference is made in these Specifications and Drawings to standard designation of ASTM, ACI, AISC, and other similar organizations and associations. The Engineer will give no consideration to any claimed ignorance as to what a cited standard contains, since each Contractor is considered to be experienced and familiar with his own trade’s generally accepted, published standards of quality and workmanship.

1.2.6 If work is required in a manner to make it impossible to produce first-class work, or should discrepancies appear among Contract Documents, or if the Contractor has any questions regarding the meaning of Contract Documents, the Contractor must

request the Engineer's interpretation and clarification before proceeding with work. If the Contractor fails to make such request, no excuse will thereafter be entertained for failure to carry out the work in a satisfactory manner. Should any conflict occur in or between Drawings and Specifications, the Contractor is deemed to have estimated on, and agreed to provide the greater quantity or better quality of materials and work unless he shall have, before submission of proposal, asked for and obtained a written decision of the Engineer as to which method or materials will be required.

### 1.3 Capitalization

1.3.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document or (3) the titles of other documents published by the American Institute of Engineers.

### 1.4 Interpretation

1.4.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### 1.5 Execution of Contract Documents

1.5.1 The Contract Documents shall be signed by the Owner and Contractor. If either Owner or Contractor or both do not sign all the Contract Documents, the Engineer shall identify such unsigned Documents upon request.

1.5.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

### 1.6 Ownership and Use of Drawings, Specifications and Other Instruments of Service

1.6.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Engineer and the Engineer's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the drawings, Specification and other documents prepared by the Engineer or the Engineer's consultants, and unless otherwise indicated the Engineer and the Engineer's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. The Drawings, Specifications and other documents prepared by the Engineer and the Engineer's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to

this Project outside the scope of the Work without the specific written consent of the Owner, Engineer and the Engineer's consultants. The Contractor, Subcontractor, Sub-subcontractor and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Engineer and the Engineer's consultants appropriate to and for use in the execution of their Work under the Contract Documents.

## **Article 2 – Owner**

### **2.1 General**

2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Subparagraph 4.2.1, the Engineer does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights.

### **2.2 Information and Services Required of the Owner**

2.2.1 The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

2.2.2 Except for permits and fees, including those required under Subparagraph 3.7.1, which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor acknowledges that these drawings may be representational and all information shall be field verified and exercise proper precautions relating to the safe performance of the Work.

### **2.3 Owner's Right to Stop the Work**

2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the

cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.

#### 2.4 Owner's Right to Carry Out the Work

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Contractor a second written notice to correct such deficiencies within a three-day period. If the Contractor within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Engineer's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Engineer. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

### **Article 3 - Contractor**

#### 3.1 General

3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Engineer in the Engineer's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

#### 3.2 Review of Contract Documents and Field Conditions by Contractor

3.2.1 Since the Contract Documents are complimentary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Subparagraph 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors,

omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Engineer as a request for information in such form as the Engineer may require.

3.2.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Engineer, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents

3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Engineer in response to the Contractor's notices or requests for information pursuant to Subparagraphs 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Subparagraphs 4.3.6 and 4.3.7. If the Contractor shall make claims as provided in Subparagraphs 3.2.1 and 3.2.2, The Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Engineer for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Engineer.

### 3.3 Supervision and Construction Procedures

3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Engineer and shall not proceed with that portion of the Work without further written instructions from the Engineer. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.

3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

#### 3.4 Labor and Materials

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

3.4.2 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Engineer and in accordance with a Change Order.

3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons not skilled in tasks assigned to them.

3.4.4 Wherever any provision of the Specifications conflict with any agreements or regulations of any kind at any time in force among members of any Trade Associations, unions or Councils, which regulate or distinguish what work shall not be included in the work of any particular trade, the Contractor shall make all necessary arrangements to reconcile any such conflict without delay, damage or cost to the Owner and without recourse to the Engineer or the Owner. In case the progress of the work is affected by any undue delay in furnishing or installing any items of material or equipment required under the Contract because of a conflict involving any such agreement or regulation, the Engineer may require that other material or equipment of equal kind or quality be provided at no additional cost to the Owner.

3.4.5 Contractor agrees to pay prevailing rates of wages in accordance with the most recent prevailing wage determination and any subsequent determination all in accordance with applicable law, providing for the payment of, and ascertaining the, prevailing rate of wages. All Contractors' bonds shall include a provision as will guarantee the faithful performance of such prevailing wage clause. Such provision shall be plainly marked on the face of such bond.

#### 3.5 Warranty

3.5.1 The Contractor warrants to the Owner and Engineer that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modification not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If

required by the Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

### 3.6 Taxes

3.6.1 The Owner is exempt from the payment of sales tax. The Owner will provide Contractor with its tax-exempt number which Contractor can use **to make purchases of materials and equipment for this Project only.**

3.6.2 This requirement excludes taxes and assessments on real property comprising site of project

### 3.7 Permits, Fees and Notices

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

3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.

3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Engineer and Owner in writing, and necessary changes shall be accomplished by appropriate modification.

3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Engineer and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

3.7.5 At the completion of work and before final certificate is issued by the Engineer, the Contractor shall turn over to the Engineer, for the Owner, any sets of the Engineer's drawings which were stamped and approved by the Building Department, and all permits or certificates issued to him.

### 3.8 Allowances

3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents:

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;

.3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect

(1) the difference between actual costs and the allowances under Clause 3.8.2.1 and

(2) changes in contractor's costs under Clause 3.8.2.2

3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

### 3.9 Superintendent

3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications shall be confirmed in writing.

### 3.10 Contractors Construction Schedules

3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Engineer's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

3.10.2 The Contractor shall prepare and keep current, for the Engineer's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Engineer reasonable time to review submittals.

3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Engineer.

### 3.11 Documents and Samples at the Site

3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Engineer and shall be delivered to the Engineer for submittal to the Owner upon completion of Work.

### 3.12 Intentionally left Blank

### 3.13 Use of Site

3.13.1 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 materials or equipments.

### 3.14 Cutting and Patching

3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

### 3.14.3 Cleaning Up

3.14.4 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

3.14.5 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

### 3.15 Access to Work

3.15.1 The Contractor shall provide the Owner and Engineer access to the Work to review preparation and progress whenever needed.

### 3.16 Royalties, Patents and Copyrights

3.16.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Engineer harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Engineer. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Engineer.

### 3.17 Indemnification

3.17.1 To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Paragraph 11.3, the

Contractor shall indemnify and hold harmless the Owner, Engineer, Engineer's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 3.18.

3.17.2 In claims against any person or entity indemnified under this Paragraph 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Subparagraph 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

3.17.3 In addition, Contractor shall indemnify and hold harmless Owner, its park commissioners, officers, employees and agents, from and against any claim, loss or cost, including without limitation court costs and attorneys fees, resulting directly or indirectly from Contractor's breach of any of the provisions of, or its failure to perform the Work in accordance with, the Contract Documents.

3.17.4 The obligations of the Contractor under this Article 3.18 shall be construed to include, but not be limited to, injury or damage consequent upon failure to use or misuse by the Contractor, his agents, and employees, of any scaffold, hoist, crane, stay, ladder, support, or other mechanical contrivance erected or constructed by any person; or any or all other kinds of equipment whether or not owned or furnished by the Owner.

#### **Article 4 - Administration of the Contract**

##### **4.1 Engineer**

4.1.1 The Engineer is the person lawfully licensed to practice Engineering or an entity lawfully practicing Engineering or Engineering identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Engineer" means the Engineer, Engineer or the Engineer's or Engineer's authorized representative.

4.1.2 Duties, responsibilities and limitations of authority of the Engineer as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Engineer. Consent shall not be unreasonably withheld.

4.1.3 If the employment of the Engineer is terminated, the Owner shall employ a new Engineer against whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the former Engineer.

#### 4.2 Engineer's Administration of the Contract

4.2.1 The Engineer will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Paragraph 12.2. The Engineer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

4.2.2 The Engineer, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Engineer will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Subparagraph 3.3.1

4.2.3 The Engineer will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Engineer will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

4.2.4 Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Engineer about matters arising out of or relating to the Contract. Communications by and with the Engineer's consultants shall be through the Engineer. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

4.2.5 Based on the Engineer's evaluations of the Contractor's Applications for Payment, the Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

4.2.6 The Engineer will have authority to reject Work that does not conform to the Contract Documents. Whenever the Engineer considers it necessary or advisable, the Engineer will have authority to require inspection or testing of the Work in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Engineer to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

4.2.7 The Engineer will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Engineer's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities or the Owner, Contractor or separate contractors, while allowing sufficient time in the Engineer's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Engineer's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs 3.3, 3.5 and 3.12. The Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Engineer, of any construction means, methods, techniques, sequences or procedures. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.8 The Engineer will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4.

4.2.9 The Engineer will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner, for the Owner's review and records, 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 the Contract Documents.

4.2.10 If the Owner and Engineer agree, the Engineer will provide one or more project representatives to assist in carrying out the Engineer's responsibilities at the site.

4.2.11 The Engineer will prepare and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement

is made concerning the time within which interpretations required of the Engineer shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Engineer to furnish such interpretations until 15 days after written request is made for them.

4.2.12 Interpretations and decisions of the Engineer will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, the Engineer will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

4.2.13 The Engineer's decision on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

#### 4.3 Claims and Disputes

4.3.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

4.3.2 Time Limits on Claims. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Engineer and the other party.

4.3.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Subparagraph 9.7.1 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

4.3.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Engineer will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Engineer determines that the conditions at the site are not

materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Engineer shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Engineer has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Engineer for initial determination, subject to further proceedings pursuant to Paragraph 4.4.

4.3.5 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency life or property arising under Paragraph 10.6.

4.3.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Engineer, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Engineer, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Paragraph 4.3.

4.3.7 Claims for Additional Time

4.3.7.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

4.3.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

4.3.8 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

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

4.3.10 Claims for Consequential Damages. The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Subparagraph 4.3.10 shall be deemed to preclude and award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

## **Article 5 - Subcontractors**

### 5.1 Definitions

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

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

### 5.2 Award of Subcontractors and Other Contracts for Portions of the Work

5.2.1 Proper and complete execution of all work shall be the responsibility of the Contractor and should he properly subcontract certain parts of the work, the Owner and Engineer will hold him responsible for proper and complete execution thereof. If the Contractor elects to enter into subcontracts for any section of the work, he shall assume all responsibility of ascertaining that the subcontractor for the work is thoroughly acquainted with all conditions of work and that the subcontractor has included all materials and appurtenances in connection therewith. It shall also be the responsibility of the Contractor to notify sub-bidders at time of request for bids of all requirements of the Contract Documents that he, the Contractor, intends to include as part of subcontract.

5.2.2 The Contractor shall not subcontract any work without prior written approval of the Owner, which approval will not be given until the Contractor submits to the Engineer a written statement concerning the proposed subcontract, which statement shall contain such information as the Engineer may require.

5.2.3 The Contractor shall list in the Proposal the names of subcontractors taken from the approved list proposed for the principal parts of the work, and for other parts of the work shall not employ any that the Engineer may, within a reasonable time, object to as incompetent or unfit.

5.2.4 The Contractor shall be as fully responsible to the Owner for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them, as he is for his acts and the acts and omissions of person directly employed by him.

5.2.5 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of the Contract Documents, and to require subcontractors to comply with the Contract Documents, and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the Contract Documents.

5.2.6 Nothing contained in the Contract shall create any contractual relation between any subcontractor and the Owner.

### 5.3 Sub contractual Relations

5.3.1 By 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 terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these 4 Documents, assumes toward the Owner and Engineer. Each subcontract agreement shall preserve and protect the rights of the Owner and Engineer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract

Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

#### 5.4 Contingent Assignment of Subcontracts

5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

**.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing; and**

**.2 assignment is subject to the prior rights of the surety, in any, obligated under bond relating to the Contract.**

5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

### **Article 6 - Construction by Owner or by Separate Contractors**

#### 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Paragraph 4.3.

6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner

shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

## 6.2 Mutual Responsibility

6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Engineer apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonable discoverable.

6.2.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2.5.

6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Subparagraph 3.14.

## 6.3 Owner's Right to Clean Up

6.3.1 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Engineer will allocate the cost among those responsible.

## **Article 7 - Changes in The Work**

### 7.1 General

7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Engineer; a Construction Change Directive requires agreement by the Owner and

Engineer and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Engineer alone.

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

## 7.2 Change Orders

7.2.1 A Change Order is a written instrument prepared by the Engineer and signed by the Owner, Contractor and Engineer, stating their agreement upon all of the following:

- .1 change in the Work;
- .2 the amount of the adjustment, if any, in the Contract Sum; and
- .3 the extent of the adjustment, if any, in the Contract Time.

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Subparagraph 7.3.3.

## 7.3 Construction Change Directives

7.3.1 A Construction Change Directive is a written order prepared by the Engineer and signed by the Owner and Engineer, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

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

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Subparagraph 7.3.6.

7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Engineer of the Contractor's agreement or disagreement with the method, if any, provided in the

Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

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

7.3.6 If the Contract does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Engineer on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Clause 7.3.3.3, the Contractor shall keep and present, in such form as the Engineer may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph 7.3.6 shall be limited to the following;

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

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

7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Engineer will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the

Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 4.

7.3.9 When the Owner and Contractor agree with the determination made by the Engineer concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

#### 7.4 Minor Changes in the Work

7.4.1 The Engineer will have authority to order minor changes in the Work not involving adjustments in the Contract Sum or 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 Owner and Contractor. The Contractor shall carry out such written orders promptly.

### **Article 8 - Time**

#### 8.1 Definitions

8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

8.1.2 The date of commencement of the Work is the date established in the Agreement.

8.1.3 The date of Substantial Completion is the date certified by the Engineer in accordance with Paragraph 9.8.

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

8.1.5 "Calendar Day" is one (1) day or twenty-four (24) hours beginning at 12:00 midnight, including every day shown on the calendar; Saturday, Sunday, and Holidays included.

8.1.6 A "Working Day" is a Calendar Day, exclusive of Saturdays, Sundays, or Holidays, when weather or other conditions beyond the Contractor's control does not prevent the completion of at least seven (7) hours of work on the principal unit of work underway between the hours of 7:00 a.m. and 6:00 p.m.

8.1.7 "Contract Starting Date" refers to the date (day, month, year) on which Contract time begins, as set forth in the Notice to Proceed.

8.1.8 "Scheduled Completion Date" refers to date on which the Contract time ends as determined by the terms of the Contract. Original Contract time may be extended or shortened by change orders.

8.1.9 "Final Inspection Date" refers to date on which a detailed inspection of the project will be made in compliance with the terms of the Contract, and the final inspection list (punch list).

## 8.2 Progress and Completion

8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

8.2.3 The Contractor shall proceed 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 commencement or progress of the Work by an act or neglect of the Owner or Engineer, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending mediation and arbitration, or by other causes which the Engineer determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Engineer may determine.

8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.3.

8.3.3 This Paragraph 8.3 does not preclude 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 Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for 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 Engineer a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Engineer may require. This schedule, unless objected to by the Engineer, shall be used as a basis for reviewing the Contractor's Applications for Payment.

### 9.3 Applications for Payment

9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Engineer an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Engineer may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

9.3.1.1 As provided in Subparagraph 7.3.8, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, or by interim determinations of the Engineer, but not yet included in Change Orders.

9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### 9.4 Certificates for Payment

9.4.1 The Engineer will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Engineer determines is properly due, or notify the Contractor and Owner in writing of the Engineer's reasons for withholding certification in whole or in part as provided in Subparagraph 9.5.1

9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Engineer to the Owner, based on the Engineer's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Engineer's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Engineer. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Engineer has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

9.4.3 Partial progress payments will be made, as the work progresses, once each calendar month, on certificates issued by the Engineer. Estimates shall be on AIA Form G-702 and the cost breakdown shall aggregate the Contract Sum.

9.4.4 In making such partial payments, there shall be retained 10 percent (10%) of the estimated amount until final completion and acceptance of all work covered by the Contract.

#### 9.5 Decisions to Withhold Certification

9.5.1 The Engineer may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Engineer's opinion the representations to the Owner required by Subparagraph 9.4.2 cannot be made. If the Engineer is unable to certify payment in the amount of the Application, the Engineer will notify the Contractor and Owner as provided in Subparagraph 9.4.1. If the Contractor and Engineer cannot agree on a revised amount, the Engineer will promptly issue a Certificate for Payment for the amount for which the Engineer is able to make such representations to the Owner. The Engineer may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Engineer's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Subparagraph 3.3.2, because of:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .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 Owner or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 persistent failure to carry out the Work in accordance with the Contract Documents.

9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

#### 9.6 Progress Payments

9.6.1 After the Engineer has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Engineer.

9.6.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

9.6.3 The Engineer will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Engineer and Owner on account of portions of the Work done by such Subcontractor.

9.6.4 Neither the Owner nor the Engineer shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6.2, 9.6.3 and 9.6.4.

9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

#### 9.7 Failure of Payment

9.7.1 If the Engineer does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Engineer or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner and Engineer, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

#### 9.8 Substantial Completion

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

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

9.8.3 Upon receipt of the Contractor's list, the Engineer will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Engineer's inspection discloses anytime, whether or not included to the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Engineer. In such

case, the Contractor shall then submit a request for another inspection by the Engineer to determine Substantial Completion.

9.8.4 When the Work or designated portion thereof is substantially complete, the Engineer will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. 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.

9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

#### 9.9 Partial Occupancy or Use

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Clause 11.4.1.5 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Engineer as provided under Subparagraph 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Engineer.

9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Engineer shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### 9.10 Final Completion and Final Payment

9.10.1 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 Engineer will promptly make such inspection and, when the Engineer finds the Work acceptable under the Contract Documents and the Contract fully performed, the Engineer will promptly issue a final Certificate for Payment stating that to the best of the Engineer's knowledge, information and belief, and on the basis of the Engineer's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Engineer's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Engineer (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorney's fees.

9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Engineer so confirms, the Owner shall, upon application by the Contractor and certification by the Engineer, 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 retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Engineer prior to

certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

## **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 and programs in connection with the performance of the Contract.

### 10.2 Safety of Persons and Property

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

- .1 employees on the Work and other persons who may be affected thereby
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as 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 notices and comply with applicable laws, ordinances, rules, regulation and lawful orders of public authorities bearing on 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 performance of the Contract, 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 sites and utilities.

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

10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the

Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they 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 acts or omissions of the Owner or Engineer 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 the Contractor's obligations under Paragraph 3.18.

10.2.6 The Contractor shall designate a responsible member of the Contractor's 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 Owner and Engineer.

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

### 10.3 Hazardous Materials

10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Engineer in writing.

10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Engineer the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Engineer will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Engineer has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Engineer have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7.

10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Engineer, Engineer's consultants and agents and employees of any of them from and against claims, damages, losses and

expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Subparagraph 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to the bodily injury, sickness disease or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

10.3.4 The Owner shall not be responsible under Paragraph 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

10.3.5 If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

#### 10.6 Emergencies

10.6.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

### **Article 11 - Insurance and Bonds**

#### 11.1 Commercial General and Umbrella Liability Insurance

11.1.1 Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location.

11.1.2 CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

11.1.3 Owner, its park commissioners, officers and employees, and the Project Engineer, its directors, officers and employees, shall be included as insureds under the CGL, using ISO additional insured endorsement CG 20 10 or a substitute providing equivalent coverage, and under the commercial umbrella if any. This insurance shall

apply as primary insurance with respect to any other insurance or self-insurance afforded to Owner and to Engineer.

11.1.4 There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage.

## 11.2 Continuing Completed Operations Liability Insurance

11.2.1 Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella liability insurance with a limit of not less than \$2,000,000 each occurrence for at least three years following substantial completion of the work.

11.2.2 Continuing CGL insurance shall be written on ISO occurrence form CG 00 01 10 93, or substitute form providing equivalent coverage, and shall, at minimum, cover liability arising from products-completed operations and liability assumed under an insured contract.

11.2.3 Continuing CCL insurance shall have a products-completed operations aggregate of at least two times its each occurrence limit.

11.2.4 Continuing commercial umbrella coverage, if any, shall include liability coverage for damage to the insured's completed work; equivalent to that provided under ISO form CG 00 01.

## 11.3 Business Auto and Umbrella Liability Insurance

11.3.1 Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$2,000,000 each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos.

11.3.2 Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

11.3.3 If Owner has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 10 under the Commercial General and Umbrella Liability Insurance required in this Contract, the Contractor waives all rights against Owner and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Contractor's work.

## 11.4 Workers Compensation Insurance

11.4.1 Contractor shall maintain workers compensation as required by statute and employers liability insurance. The commercial umbrella and or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

## 11.5 General Insurance Provisions

### 11.5.1 Evidence of Insurance

11.5.1.1 No less than 15 days prior to beginning work, Contractor shall furnish Owner with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

11.5.1.2 All certificates shall provide for 30 days' written notice to Owner prior to the cancellation or material change of any insurance referred to therein. Written notice to Owner shall be by certified mail, return receipt requested.

11.5.1.3 Failure of Owner to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of Owner to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

11.5.1.4 Owner shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Owner.

11.5.1.5 Failure to maintain the required insurance may result in termination of this Contract at Owner's option.

11.5.1.6 With respect to insurance maintained after final payment in compliance with a requirement above, an additional certificate(s) evidencing such coverage shall be promptly provided to Owner whenever requested.

11.5.1.7 Contractor shall provide certified copies of all insurance policies required above within 10 days of Owners' written request for said copies.

### 11.5.2 Acceptability of Insurers

11.5.2.1 For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Owner has the right to reject insurance written by an insurer it deems unacceptable.

### 11.5.3 Cross-Liability Coverage

11.5.3.1 If Contractor's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

### 11.5.4 Deductibles and Self-Insured Retentions

11.5.4.1 Any deductibles or self-insured retentions must be declared to the Owner. At the option of the Owner, the Contractor may be asked to eliminate such deductibles or self-insured retentions as respects the Owner, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

### 11.5.5 Subcontractors

11.5.5.1 Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified above. When requested by the Owner, Contractor shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

### 11.5.6 Indemnification

11.5.6.1 Contractor shall protect, indemnify, hold and save harmless and defend the **Rolling Meadows Park District**, its officers, officials, employees, volunteers, and agents against and from any and all claims, costs, causes, actions and expenses, including but not limited to legal fees (attorneys, paralegal and court cost) incurred by reason of a lawsuit or claim for compensation arising in favor of any person, including the employees or officers or independent contractors or subcontractors of the Contractor or **Rolling Meadows Park District**, on account of personal injuries or death, or damages to property occurring, growing out of incident to, or resulting directly or indirectly from any act or omission of Contractor, whether such loss, damage, injury or liability is contributed to by the negligence of the **Rolling Meadows Park District** or by premises themselves or any equipment thereon whether latent or patent, or from other causes whatsoever, except that Contractor shall have no liability for damages or the costs incident thereto caused by the sole negligence of the **Rolling Meadows Park District**. Contractor shall similarly protect, indemnify, hold and save harmless and defend the **Rolling Meadows Park District**, its officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses, including but not limited to or incurred by reason of Contractor's breach of its obligations

under its contracts with the **Rolling Meadows Park District** for the provision for transportation services.

#### 11.6 Performance Bond and Payment Bond

11.6.1 Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

11.6.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

11.6.3 The performance bond and Material Payment Bond shall remain in effect for a period of one year after substantial completion as a warranty against any defective materials or workmanship.

11.6.4 The Contractor shall furnish, supply and deliver a surety bond to secure the performance of the contract and payment of all subcontractors and material suppliers in accordance with the Illinois Public Construction Bond Act.

### **Article 12 - Uncovering and Correction of Work**

#### 12.1 Uncovering of Work

12.1.1 If a portion of the Work is covered contrary to the Engineer's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Engineer, be uncovered for the Engineer's examination and be replaced at the Contractor's expense without change in the Contract Time.

12.1.2 If a portion of the Work has been covered which the Engineer has not specifically requested to examine prior to it's being covered, the Engineer may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

#### 12.2 Correction of Work

##### 12.2.1 Before or After Substantial Completion

12.2.1.1 The Contractor shall promptly correct Work rejected by the Engineer or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Engineer's services and expenses made necessary thereby, shall be at the Contractor's expense.

##### 12.2.2 After Substantial Completion

12.2.2.1 In addition to the Contractor's obligations under Paragraph 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Subparagraph 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Engineer, the Owner may correct it in accordance with Paragraph 2.4.

12.2.2.2 The on-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Paragraph 12.2.

12.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.2.5 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Subparagraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the 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 the Contractor's obligations other than specifically to correct the Work.

### 12.3 Acceptance of Nonconforming Work

12.3.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## **Article 13 - Miscellaneous Provisions**

### **13.1 Governing Law**

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

### **13.2 Successors and Assigns**

13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligation contained in the Contract Documents. Except as provided in Subparagraph 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

13.2.2 The Owner may, without consent of the Contractor, assign the Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

### **13.3 Written Notice**

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

### **13.4 Rights and Remedies**

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

13.4.2 No action or failure to act by the Owner, Engineer of Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

### **13.5 Tests and Inspections**

13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules regulation or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals. The Contractor shall give the Engineer timely notice of when and where tests and inspections are to be made so that the Engineer may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

13.5.2 If the Engineer, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 13.5.1, the Engineer will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Engineer of when and where tests and inspections are to be made so that the Engineer may be present for such procedures. Such costs, except as provided in Subparagraph 13.5.3, shall be at the Owner's expense.

13.5.3 If such procedures for testing, inspection or approval under Subparagraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Engineer's services and expenses shall be at the Contractor's expense.

13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Engineer.

13.5.5 If the Engineer is to observe tests, inspections or approvals required by the Contract Documents, the Engineer will do so promptly and, where practicable, at the normal place of testing.

13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

## **Article 14 - Termination or Suspension of the Contract**

### **14.1 Termination by the Contractor**

14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons;

- .1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- .2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;
- .3 because the Engineer has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Subparagraph 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Subparagraph 2.2.1.

14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Paragraph 14.3 constitute in the aggregate more than 100 percent of the total number of days schedules for completion, or 120 days in any 365-day period, whichever is less.

14.1.3 If one of the reasons described in Subparagraph 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Engineer, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and Engineer, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.3.

#### 14.2 Termination by the Owner for Cause

14.2.1 The Owner may terminate the Contract if the Contractor:

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and Subcontractors;
- .3 persistently disregards laws, ordinances, or rules, regulation or orders of a public authority having jurisdiction; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

14.2.2 When any of the above reasons exist, the Owner, upon certification by the Engineer that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety;

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 accept assignment of subcontracts pursuant to Paragraph 5.4; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the

Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

14.2.3 When the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Engineer's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Engineer, upon application, and this obligation for payment shall survive termination of the Contract.

#### 14.3 Suspension by the Owner for Convenience

14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Subparagraph 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent;

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

#### 14.4 Termination by the Owner for Convenience

14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause

14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall;

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

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

## **Article 15 – Equal Employment Opportunity**

15.1 The Contractor shall maintain and shall require its Subcontractors to maintain policies of employment as follows:

15.1.1 In the event of the Contractor's non-compliance with the provisions of this equal opportunity clause, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of Human Rights ("Department"), Contractor may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the Contract may be cancelled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this Contract, Contractor agrees as follows:

- 1) That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, marital status, national origin or ancestry, citizenship status, age, physical or mental disability unrelated to a person's ability to perform the essential functions of the job, association with a person with a disability, military status or an unfavorable discharge from military service, or record of arrest; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.**
- 2) That, if it hires additional employees in order to perform this Contract or any portions thereof, it will determine the availability (in accordance with the Department's Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.**
- 3) That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, sexual orientation, marital status, national origin or ancestry, citizenship status, age, physical or mental handicap or disability unrelated to a person's ability to perform the essential function of the job, or association with a person with a disability, military status or an unfavorable discharge from military service, or record of arrest.**
- 4) That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Contractor's obligations under the Illinois Human Rights Act and the Department's rules and regulations. If any such labor organization or representative fails or refuses to cooperate with the Contractor in its efforts to**

**comply with such Act and rules and regulations, the Contractor will promptly notify the Department and the Owner and will recruit employees from other sources when necessary to fulfill its obligations thereunder.**

**5) That it will submit reports as required by the Department's rules and regulations, furnish all relevant information as may from time to time be requested by the Department or the Owner, and in all respects comply with the Illinois Human Rights Act and the Department's rules and regulations.**

**6) That it will permit access to all relevant books, records, accounts and work sites by personnel of the Owner and the Department for purposes of investigation to ascertain Department's rules and regulations.**

**7) That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the Contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this Contract, the Contractor will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the Owner and the Department in the event any subcontractor fails or refuses to comply therewith. In addition, the Contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.**

**15.2 The Contractor is encouraged to utilize qualified minority businesses as subcontractors for supplies, services and construction.**

#### **Article 16 – Prevailing Rates of Wages**

16.1 All Contracts for Work for this Project are subject to the provisions of the Illinois Prevailing Wage Act (820 ILCS 130/0.01 et seq.), providing for the payment of the prevailing rate of wage to all laborers, workmen and mechanics engaged on the Work. The Contractor shall pay prevailing rates of wages in accordance with the Owner's annual wage determination included with the Contract Documents, and any subsequent determinations issued by the Illinois Department of Labor which shall supersede the Owner's determination, all in accordance with applicable law. Bidders and contractors performing work on this Project are responsible for determining the applicable prevailing wage rates issued by the Illinois Department of Labor at the time of bid submission and performance of the Work. Failure of a bidder/contractor to make such determination shall not relieve it of its obligations in accordance with the Contract Documents.

16.2 The Contractor shall insert into each subcontract and into the project specifications for each subcontract (i) a written stipulation to the effect that not less than the prevailing rate of wages shall be paid to all laborers, workers and mechanics performing work under the subcontract; and (ii) a requirement that each subcontractor include a comparable provisions in each lower tiered subcontract and in the project specifications for each lower tiered subcontract.

16.3 The Contractor and each of its subcontractors shall make and keep, for a period of not less than three years, true and accurate records of the name, address, telephone number when available, Social Security number, and occupation of all laborers, workers and mechanics employed by them in connection with performance of the Work. These records must show the actual hourly wages paid in each pay period to each employee, and the hours worked each day in each work week by each employee, including his or her starting and ending times. The Contractor and each of its subcontractors shall make these records available for inspection at all reasonable hours to the Director of Labor and his deputies and agents. Any Contractor or subcontractor that maintains its principal place of business outside of Illinois is required to make these records or accurate copies of them available within Illinois at all reasonable hours for inspection.

#### **Article 17 – Sexual Harassment Policy**

17.1 Pursuant to Section 2-105 of the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.) (“Act”), the Contractor shall have in effect and in force, a written sexual harassment policy which includes, at a minimum, the following provisions: (i) a statement on the illegality of sexual harassment; (ii) the definition of sexual harassment under Illinois law; (iii) a description of sexual harassment, utilizing examples; (iv) an internal complaint process, including penalties; (v) the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights (“Department”) and the Illinois Human Rights Commission (“Commission”); (vi) directions on how to contact the Department and the Commission; and (vii) protections against retaliation as provided by Section 6-101 of the Act.

17.2 The Contractor understands, acknowledges, agrees and warrants to the Owner that it is now, and will remain for the entirety of the Contract in compliance with Section 2-105. A violation of Section 2-105 is grounds for the immediate cancellation of the Contract. However, any forbearance or delay by the Owner in canceling the Contract shall not be construed as Owner's consent to such violation and shall not constitute a waiver of any rights the Owner may have, including, without limitation, cancellation of the Contract.

**15. Bid Form**

Proposal of \_\_\_\_\_, hereinafter called "BIDDER",

\_\_\_\_\_

a / (an) (corporation, partnership, individual)

doing business as \_\_\_\_\_

with the **Rolling Meadows Park District**, hereinafter called the "**Owner**".

The Bidder, in response to your advertisement for bids for the **Nelson Sports Complex Window Replacement System Replacement**, examined the Specifications and other documents, hereby proposes to furnish and deliver all materials and supplies in accordance with the Contract Documents, within the time set forth therein and at the prices stated below. These prices are to cover full completion of the Work described within these documents.

Bidder acknowledges receipt of the following Addenda, which are a part of the Contract Documents:

Numbers:                   ,                   ,                   ,                   ,                   ,                   ,

Bidder hereby agrees to start work within ten (10) days after receipt of "Notice to Proceed" from the Owner and to substantially complete the project as specified in the Project Identification and Schedule.

Important Note – Federal Laws and Regulations Concerning the Payment of Prevailing Wages Apply to this Project. Copies of the Labor Standards Provisions and the most recent Department of Labor Wage Determination are herewith provided.

THE FOLLOWING MUST BE RETURNED WITH THE BID:

The Bid Form Completed.

The Required Certifications forms.

Bidder agrees to perform all of the work described in the Specifications and shown on the Drawings for the Unit Prices or Lump Sum, as applicable, as listed on the Line Item Bid Form.

Accompanying bid is a 10 % Bid Bond (in the form of a Bid Bond or Cashier's Check) in the amount of: (\$\_\_\_\_\_ ) the same being subject to forfeiture in the event of default by the undersigned.

In submitting this bid, it is understood that the right is reserved by the Owner to reject any and all bids and it is agreed that this bid may not be withdrawn during the period of days provided in the Contract Documents.

The Bidder hereby certifies:

- A. That this bid is genuine and is not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation.
- B. That he has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid.
- C. That he has not solicited or induced any person, firm, or corporation to refrain from bidding.
- D. That he has not sought by collusion or otherwise to obtain for himself any advantage over any other bidder or over the "Owner".
- E. That he will comply with all provisions of the current Prevailing Wage Ordinance.
- F. That he is in compliance with the Criminal Code Act of 1961, Article E-11, Public Contracts, and Public Act 85-1295.
- G. That all materials, methods and workmanship shall conform to the drawings, specifications, manufacturer's standards and specifications.
- H. That the Contractor Compliance and Certifications Attachment is true and correct in all respects.

Rolling Meadows Park District  
Nelson Sports Complex  
Window System Replacement Project

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(Company)

BY: \_\_\_\_\_  
(Sign) (Date)

---

(Print Name & Title)

**BID FORM**

- |                              |          |          |
|------------------------------|----------|----------|
| 1. COST OF MATERIALS         | TOTAL    | \$ _____ |
| 2. COST OF LABOR             | TOTAL    | \$ _____ |
| 3. RATE OF TIME AND MATERIAL | TOTAL    | \$ _____ |
| 4. GRAND TOTAL OF PROJECT    | TOTAL \$ | _____    |

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PHONE: \_\_\_\_\_

OWNER/PRESIDENT \_\_\_\_\_

SIGNATURE

**TIMELINE NOTICE:**

**THIS PROJECT IS TO BE COMPLETED ON OR BEFORE MARCH 1, 2017 FAILURE TO MEET THIS TIMELINE MAY RESULT IN A TEN PERCENT LOSS OF BASE BID FOR EVERY WEEK OF NON COMPLIANCE**

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

