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IT IS THE VENDOR'S RESPONSIBILITY TO CHECK FOR ADDENDUM PRIOR TO SUBMITTING PROPOSALS

NOTICE TO BIDDERS
SPECIFICATION NO. 05-106
PROJECT NO. NPS 31-00947

Federal funds will be used to assist with the development of this project.
The City of Lincoln, Nebraska intends to enter into a contract invites you to submit a sealed bid for:

RENOVATION
OF THE
MAHONEY PARK PLAYGROUND
70TH AND FREMONT STREETS

Sealed bids will be received by the City of Lincoln, Nebraska on or before 12:00 noon Wednesday, April 27, 2005, in the office of the Purchasing Agent, Suite 200, K Street Complex, 440 South 8th Street, Southwest Wing, Lincoln, Nebraska 68508. Bids will be publicly opened and read at the K Street Complex.

Bidders should take caution if U.S. Mail or mail delivery services are used for the submission of bids. Mailing should be made in sufficient time for bids to arrive in the Purchasing Division, prior to the time and date specified above.

A copy of the Specification can be downloaded at www.lincoln.ne.gov. Keyword: bid. Plans can be picked up in the office of purchasing located at 440 South 8th Street, Lincoln, NE 68508 or you can call 402-441-7416 and a set can be mailed.

TECHNICAL SPECIFICATIONS
FOR
PLAY EQUIPMENT AND STRUCTURES
SPECIFICATION 05-106

1. SCOPE

1.1 The playground equipment and materials shall be the same as or provide equal play value to the following specifications.

1.2 All equipment (including associated fall protection zones) must fit into the footprint shown on drawings.

1.3 The bid for this project is lump sum for supply and installation.

1.3.1 Furnish labor, material and equipment necessary for the provision and installation of the playground equipment, structure or modular unit as shown on the drawings and specified herein.

1.3.2 Work shall include but not limited to the following: excavation and site grading, layout, and the provision and installation of playground equipment, structure or modular unit in accordance with the manufacturer's installation instructions, including all appurtenances and accessories as required for a full and complete installation.

2. SUBMITTALS

2.1 Submittal Procedures

2.1.1 Allow sufficient review time so that work will not be delayed as a result of the time required to process submittals.

2.1.2 No extension of contract time will be authorized because of failure to transmit submittals in advance of the work.

2.1.3 Submittals of Shop Drawings and Product Data will not be accepted until stamped by the contractor with a stamp indicating approval.

2.2. Product data

2.2.1 The Contractor shall submit within fifteen (15) calendar days after receipt of contract and Notice to Proceed complete sets of the material and equipment submittals, including:

2.2.1.1 Play equipment manufacturer and manufacturer's representative's name(s) and address(es).

2.2.1.2 Plan view drawings with model numbers, descriptive labels (including component names), deck heights, and notations of compliance with CPSC, ASTM F1487-01 and ADA.

2.2.1.3 Detailed component list with model numbers and catalog descriptions.

2.2.1.4 Color chart.

2.2.1.5 Written material specifications for all components.

2.2.1.6 IPEMA certification certificate from the IPEMA web site.

2.2.1.7 Copy of Manufacturer's warranty in certificate format.

2.2.1.8 Copy of manufacturer's ISO 9001 Certification.

2.3 Approval of the submittals shall be the Contractor's authorization to order the required material and equipment.

2.3.1 There will be no deviation from the approved submittals without the written authorization of the Owner's representative.

3. PRODUCTS

3.1 Products

3.1.1 The layout shown on the drawings is based upon equipment and measurements from Miracle Recreation Equipment Company.

3.1.2 Acceptable manufacturers include Miracle Recreation, Playworld Systems or approved equivalent.

3.1.3 Other products may be considered equal if all the parameters, specification and design of the drawings are met.

3.2 Design and Fabrication

3.2.1 Playground equipment, structure or modular unit submitted for consideration shall be equivalent in design, layout, deck size, post size, clamping/fastening system, deck/slide/climber height, ADA accessibility, appearance, color and construction detail to playground equipment specified in the drawings.

3.2.2 Deck heights shall not exceed 6'-0". Reasonable variations in manufacturer's standard colors may be allowed at the Owner's discretion.

3.2.3 Color schemes are to match as closely as possible to the drawings.

3.2.4 Play value and safety features of components must be equal or superior to specified design as judged by the Owner's representative.

3.3 Alternates

3.3.1 Any alternate products, equipment and/or manufacturer shall be approved by the Owner's Representative before the award of a contract.

3.3.2 **ALL correspondence MUST be sent/copied to Tom Kopplin, Assistant Purchasing Agent, tkopplin@lincoln.ne.gov**

3.4 Modification

3.4.1 Any expense of modification, adjustment or revision required to ensure compliance of furnished equipment to specified equipment and playground design shall be the sole expense and responsibility of the Contractor.

4. PLAYGROUND SAFETY STANDARDS AND QUALITY ASSURANCE

4.1 All products shall bear the certification seal of the International play Equipment Manufacturers Association (IPEMA).

4.1.1 All designs shall meet or exceed the Americans with Disabilities Act (ADA) "Final Accessibility Guidelines for Play Areas" regulations as published on October 18, 2000.

4.1.2 All manufacturers must be ISO 9001 certified.

4.1.3 All equipment shall meet or exceed current CPSC and ASTM F1487 Playground Standards / Guidelines.

5. REFERENCES AND STANDARDS

5.1	ASTM:	American Society for Testing and Materials
5.2	CPSC:	Consumer Product Safety Commission
5.3	IPEMA:	International Playground Equipment Manufacturers Association
5.4	ADA:	Americans with Disabilities Act
5.5	ISO:	International Organization for Standardization
5.6	CPSI:	Certified Playground Safety Inspector

6. WARRANTY/GUARANTEE

6.1 The equipment manufacturer shall warrant material and workmanship against defects, from the date of manufacturer's invoice, for the minimum period of time as follows:

6.1.1 ONE HUNDRED (100) YEAR WARRANTY on aluminum deck posts, steel deck posts, clamping/fastening system and associated fastening hardware against structural failure caused by corrosion or deterioration from exposure to weather, or by defective materials or defective workmanship.

6.1.2 FIFTEEN (15) YEAR WARRANTY on play system steel components including legs, railings, rungs, and rigid climbers against structural failure caused by corrosion, defective materials or defective workmanship.

6.1.3 FIFITEEN (15) YEAR WARRANTY on rotationally-molded plastic components against structural failure caused by defective materials or workmanship.

6.1.4 THREE (3) YEAR WARRANTY on Slash proof Seats and 360 degree Bucket Tot Seats for Swings against structural failure caused by defective materials or defective workmanship.

6.1.5 ONE (1) YEAR WARRANTY on all products not listed above including all moving parts and flexible climbers against structural failure caused by defective materials or defective workmanship.

6.1.6 The Contractor shall guarantee installation workmanship for a period of one year from the date of Substantial Completion of the Project.

6.1.6.1 The Contractor shall be responsible for coordinating manufacturer material warranty items with the manufacturer/distributor and for the installation of replacement materials(s) at no additional cost to the Owner.

6.1.6.2 A copy of Contractor's installation warranty on company letterhead must be provided.

7. MATERIALS

7.1 Equipment

7.1.1 See drawings for type, style, configuration, size and height of playground equipment, structure or modular unit to be provided.

7.2 Color Schedules

7.2.1 See drawings for the color schedules of the various elements of the playground equipment, structure or modular unit to be provided.

8. SPECIFICATIONS

8.1 Designs and specifications are based upon equipment from Miracle Recreation Equipment Company.

8.2 Equals will be considered against this standard of quality, design and play value and will be determined at the Owner's discretion.

8.3 Play Equipment

8.3.1 Vendors must offer both "stand alone" and "modular equipment.

8.3.1.1 Quality, durability, creative design, variety of options and pricing structure will be considered in the analysis of the manufacturer's offered.

8.3.2 The modular equipment shall be composed of similar elements which can be configured in a variety of ways.

8.3.3 Maintenance, expansion and modification shall be easily accomplished.

8.3.4 A warranty as described in section six (6) is required.

8.4 Powder Coating

8.4.1 All metal components to be offered with a powder-coating and free of excess weld and splatter.

8.4.2 Parts to be cleaned and sealed with a non-chrome seal for corrosion resistance.

8.4.3 Powder coating to be electrostatically applied (or applied via a durable long-lasting method) and oven cured at 450 degrees.

8.5 Decks, Platforms and Bridges

8.5.1 Are to be constructed of perforated steel, minimum twelve (12) gauge, and reinforced as necessary to insure structural integrity.

8.6 Posts

8.6.1 Post lengths to vary depending upon intended use.

8.6.2 All posts shall have a "finish grade marker" to identify the bury line required for correct installation.

8.6.3 Post may be offered in a variety of shapes and dimensions including:

8.6.3.1 Round

8.6.3.2 Square

8.6.3.3 5" diameter

8.6.3.4 3" diameter

8.6.4 Posts to be offered in powder coated O.D. steel tubing with a wall thickness of .120" and shall be galvanized after rolling and shall have both the I.D. and cut ends sprayed with a corrosion resistant coating.

8.7 End Caps

8.7.1 Caps for posts shall be aluminum die casting powder-coated to match post color or approved alternate.

8.7.2 All caps are to be factory installed and secured in place with three (3) rivets which are self-sealing.

8.7.3 P.V.C. caps may be slipped onto the bottom ends of the post to increase the footing area from 2" square to 20" square and serve as a moisture barrier.

8.8 Climber Rung Size

8.8.1 Are to be a minimum of ¾" to a maximum of 1 ½" in diameter to allow proper grip for differing age groups.

8.8.2 Rails and grips on climbers should be between 1" and 1 ¼" in diameter.

8.9 Slides

8.9.1 Average incline of sliding surfaces should not exceed thirty (30) degrees.

8.9.2 All slides over 4' height must have slides of at least 2 ½" high along the entire length of the sliding surface.

8.9.3 Slide access decks 4' high or more should have protective non-climbable barriers at least 38" high.

8.9.4 Steps and rungs on slides (and other equipment) should be evenly spaced, with at least 7" and not more than 11" between them.

8.9.5 They must be at least 15" wide, horizontal, and corrugated, grooved or covered with a slip-resistant finish that is effective under both wet and dry conditions.

8.9.6 Non-metal one-piece slides or slides with lap joints rather than butt joints.

8.10 Attachment Hardware

8.10.1 There shall be as few types of attaching hardware as possible (i.e., one or two bolt sizes).

8.10.2 All hardware shall be of a vandal resistant type.

8.10.3 Hex-head type bolts are not recommended; bolts and nuts which use uncommon fastening methods are preferred.

8.10.4 All hardware shall meet or exceed the CPSC and ASTM Safety and Performance Guidelines.

8.11 Plastics

8.11.1 All plastics shall be high grade nylon, polyethylene or polycarbonate.

8.11.2 They are to be stabilized against ultra-violet light degradation and shall be non-combustible.

8.12 Chain and Cable Climbing Apparatus

8.12.1 All chain or cable climbing apparatus shall be covered with a durable plastic coating which is cut resistant.

8.12.2 Joints shall be smooth and free of burrs.

8.13 Safety and Performance Guideline

8.13.1 All playground equipment offered shall meet or exceed the CPSC and ASTM Safety and Performance Guidelines.

8.14 Platted Equipment for On-Concrete Slab Installation

8.14.1 All center modular platform playground equipment shall be platted for installation on concrete 5" slab.

8.14.2 All anchor plates shall be designed to provide safe operation of the play equipment and to resist wind loads, rain, snow, ice, etc.

8.15 SYNTHETIC SURFACING

8.15.1 Synthetic surfacing shall be offered in a variety of thicknesses to accommodate a range of applications.

8.15.2 Product offered must accommodate a fall from 3 to 7 feet, and comply with ADA and CPSC guidelines.

8.15.3 Product offered may be available in panels requiring adhesive or mechanical attachment to an underlying prepared surface.

8.15.4 Product to be weather resistant, allowing for proper surface and ground-base drainage.

8.15.5 A variety of colors must be available

8.15.6 A minimum of five (5) year limited warranty is required.

8.16 PARK BENCHES, TRASH RECEPTACLES AND PICNIC TABLES

8.16.1 All park benches, trash receptacles and picnic tables shall be manufactured by Wabash Valley, Contractors shall give pricing on this manufacturer only.

9. PLAY EQUIPMENT COMPONENT LIST

	Qty.	Miracle Model No.	Description
9.1	1	7145019	Triangle Deck (Attaches to 3 Posts), MT II
9.2	2	7145029	Square Deck (Attaches to 4 Posts), MT II
9.3	1	71453859	CST 5' Octagon Deck for Roof, MT II
9.4	3	714553	5" OD x 160" Post (5'6" to 6'6" Decks)
9.5	4	714572	5" OD x 144" Post for Roof (3' Decks or less)
9.6	4	714573	5" OD x 168" Post for Roof (3'6" – 5' Deck)
9.7	1	714703	Swing Rings 90 Deg. w/ End Climber
9.8	1	714721	Canyon Climber (3' and 5' Deck)

	Qty.	Miracle Model No.	Description, Continued
9.9	1	7147265	Mogul Slide-One Piece (5' Deck)
9.10	1	71474959	6'2" Typhoon Slide 405 Deg. (5' Deck), MT II
9.11	1	71475726	Sloped Climbing Wall (6'6" Deck)
9.12	1	714808	Climbing Pole (3', 5' or 6'6" Deck)
9.13	1	714808	Climbing Pole (3', 5' or 6'6" Deck)
9.14	1	7148109	ADA Stair Between Decks w/ 1' Rise, MT II
9.15	1	714815	Vertical Ladder Climber (5' Deck)
9.16	1	714850	Chameleon Slide Entry & Exit Section
9.17	1	714850Z	Cham. Exit Section (Included in 714850)
9.18	1	714850AZ	Cham. Spt. Leg Pkg. 54" (Included in 714850)
9.19	1	714850BZ	Cham. Spt. Leg Pkg 84.5" (Included in 714850)
9.20	2	7148502	Chameleon Slide Right Turn Section
9.21	2	7148503	Chameleon Slide Left Turn Section
9.22	2	7148624	Roof for Square Deck, Perf. Steel
9.23	1	7148628	Roof for Octagon Deck, Perf. Steel
9.24	1	714905	Horizontal "L" Ladder w/ End Climber
9.25	1	714908	Spider Climber (3', 5' or 6'6" Deck)
9.26	1	7149589	M'Therm Steps from Ground to 3' Deck, MT II
9.27	1	7149599E	ADA Stairs Between Decks w/ 2' Rise, Ext., MT II
9.28	1	71496559	Transfer Point w/ Single Step (5' Deck), MT II
9.29	1	71497049	4' Arch Bridge Between Decks, MT II

9.30 See Section ten (10) of the Instructions to Bidders in regards to Brand Name.

10. INSTALLATION

10.1 Instructions

10.1.1 Explicit, printed installation instructions shall be provided by the manufacturer, which shall include detailed, scaled plan views, elevations, and footing drawings and details when applicable, as well as sequential assembly instructions to assure proper installation of the playground equipment, structure or modular unit.

10.1.2 Equipment must be installed by a manufacturer-certified installer and must be installed in accordance with the manufacturer's installation instructions. Installation crew leader must be CPSI-certified.

10.1.2.1 If not installed by a manufacturer-certified installer, the equipment shall be inspected after installation by a CPSI not employed by the installer and signed off by said CPSI before the playground is opened for first use.

11. CLOSE-OUT

11.1 Contractor shall provide the Owner with one copy of complete manufacturer's installation instructions and maintenance kit.

11.1.1 Manufacturers must send at least two (2) sets of installation manuals with each order.

11.1.2 Additional sets of installation instructions should be purchased from the manufacturer if originals are lost or damaged.

11.1.3 It is the Contractor's responsibility to secure the installation instructions from the installer.

11.1.4 The Playground Supplier must mail one complete set of installation instructions directly to the Owner.

11.1.4.1 If the Supplier complies with 11.1.3,the Contractor shall not be required to supply additional set to the Owner.

12. <u>CLEAN-UP</u>

12.1 The site shall be kept clean and free of tools, trash, debris and installation materials on a daily basis.

12.2 Material may be stored on site during installation with appropriate protective measures and approval by the Owner's representative.

SPECIFICATION NO. 05-106
BID OPENING TIME: 12:00 NOON
DATE: APRIL 27, 2005

The undersigned bidder, having full knowledge of the requirements of the City of Lincoln for the below listed items and the contract documents (which include Notice to Bidders, Instructions to Bidders, this Proposal, specifications, Contract, and any and all addenda) and all other conditions of the Proposal, agrees to sell to the City below the listed items for the performance of this Specification, complete in every respect, in strict accordance with the contract documents at and for unit prices listed below.

Federal funds will be used to assist with development of this project.

ADDENDA RECEIPT: The receipt of addenda to the specifications numbers _____ through _____ are hereby acknowledged. Failure of any bidder to receive any addendum or any interpretation of the specifications shall not relieve the bidder from obligations specified in the bid request. All addenda shall become part of the final contract document.

BIDDING SCHEDULE

Item	Description	Qty.	Unit Cost	Total Cost
1.	Playground Equipment Supply & Installation at Mahoney Park	1	Lump Sum	$ _____

A FIVE PERCENT (5%) BID SECURITY IS REQUIRED AT THE TIME OF SUBMITTAL.

IF AWARDED, A PERFORMANCE BOND WILL BE REQUIRED WITH THE RETURNED CONTRACT.

AFFIRMATIVE ACTION PROGRAM: Successful bidders will be required to comply with the provisions of the City's Affirmative Action Policy (Contract Compliance, Sec. 1.16). The Equal Opportunity Officer will determine compliance or non-compliance, upon a complete and substantial review of successful bidder's equal opportunity policies, procedures and practices.

The undersigned signatory for the bidder represents and warrantes that he has full and complete authority to submit this proposal to the City, and to enter into a contract if this proposal is accepted.

RETURN TWO (2) COMPLETE COPIES OF PROPOSAL AND SUPPORT MATERIAL.
MARK OUTSIDE OF BID ENVELOPE AS FOLLOWS:
SEALED BID FOR SPEC. 05-106

COMPANY NAME	SIGNATURE
STREET ADDRESS OR PO BOX	PRINT NAME
CITY, ST ZIP CODE	TITLE
TELEPHONE	DATE
EMPLOYER'S FEDERAL I.D. OR SOCIAL SECURITY NUMBER	TERMS OF PAYMENT

BIDS MAY BE INSPECTED IN THE PURCHASING DIVISION OFFICES DURING NORMAL BUSINESS HOURS, AFTER TABULATIONS BY THE PURCHASING AGENT. IF YOU DESIRE A COPY OF THE BID TABULATION TO BE MAILED TO YOU, A SELF-ADDRESSED STAMPLED ENVELOPE MUST BE ENCLOSED WITH YOUR BIDDING DOCUMENTS.

SPECIAL CONDITIONS

Land and Water Conservation Funds Requirements

Mahoney Park Playground Renovation

Bid Section
Lincoln Parks & Recreation Department

Specification No. 05-106

NEBRASKA GAME AND PARKS COMMISSION
LAND AND WATER CONSERVATION FUND

PROCUREMENT BY SEALED BIDS

I. GENERAL

In Nebraska a project item that will cost $25,000 or more, in the aggregate, must be procured by the method of sealed bids (formal advertising). To determine the project item's aggregate cost, the sponsor or engineer must add the sum of all of the parts of the item that will make it a whole, usable and functional facility. A shelter project, for example, might consist of components such as the structure, concrete and electrical whose total combined (aggregate) estimated cost is $25,000 or more. As such, the facility must be publicly advertised for sealed bids. THE SPONSOR MAY NOT SEPARATE THE AGGREGATE ITEMS TO AVOID ADVERTISING A PROJECT ITEM.

II. SEALED BID STANDARDS

Sealed bids are defined as bids that are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. All sealed bid procurement transactions will be conducted in a manner providing full and open competition. In order for sealed bids to be feasible, the following conditions should be present:

A. A complete, adequate and realistic specification or purchase description is available;

B. Two or more responsible bidders are willing and able to compete effectively for the business; and

C. The procurement lends itself to a firm fixed-price contract and the selection of the successful bidder can be made principally on the basis of price.

When sealed bids are used, the following requirements apply:

A. The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

B. The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

C. All bids will be publicly opened at the time and place prescribed in the invitation for bids;

D. A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

E. Any or all bids may be rejected if there is a sound documented reason.

III. SPONSOR'S RESPONSIBILITIES

A. Plans and Specifications and Bid Documents. The sponsor will be required to have prepared proper bid documents and plans and specifications for obtaining sealed bids for a project item that is estimated to cost $25,000 or more or as required by state law. Such plans and specifications will be prepared by a Nebraska licensed and qualified architect or engineer. The sponsor, or the designated consultant, will submit two (2) sets of plans and specifications to the Nebraska Game and Parks Commission for review and approval prior to opening the sealed bids. The sponsor will receive an approval letter with additional procedural instructions.

NOTE: G & PC's review of the plans and specifications will be restricted to proper federal contract procurement provisions. The principal architect or engineer is ultimately responsible for the performance and safety of the facility or project items that are specified in the plans and specifications document. The NGPC reserves the right to require plans and specifications for any project item.

B. Reviews and Approvals by Other Agencies.

1. State Electrical Division. Construction projects involving major electrical work will be inspected by an inspector of the State Electrical Division upon project completion. There is a fee charged for this service and it is eligible for funding. IF your community has an electrical inspector, your inspector should do the inspection. Submit one (1) copy of their final inspection report. You or your consultant is responsible for contacting division personnel.
2. Department of Environmental Quality. Construction projects involving septic tank/tile fields or sanitary sewers should be forwarded directly to the Department of Environmental Quality, Wastewater Facilities Section, PO Box 98922, Lincoln NE 68509-8922. Submit one (1) copy of their review and approval. There is a fee charged for this service and it is eligible for funding.
3. Department of Health. Projects involving underground irrigation projects should be sent directly to the Department of Health, Division of Environmental Health and Housing Surveillance, PO Box 95007, Lincoln NE 68509-5007. Submit one (1) copy of their review and approval. There is a fee charged for this service and it is eligible for funding.

Generally approvals by either the Department of Environmental Quality or the Department of Health will be granted prior to opening any sealed bids. If this is not possible, a Change Order will be necessary to incorporate their comments into the plans and specifications. No review is required for projects involving water fountains or yard hydrants. However, it is expected that the local sponsor provide safe and sanitary delivery facilities for public use and that, where possible, they be made accessible and usable by the handicapped.

C. Handicapped Accessibility Requirements. All facilities subject to Title II of the Americans with Disabilities Act (A.D.A.) must be designed and constructed in conformance with the Accessibility Guidelines for Buildings and Facilities. These design guidelines were modeled on the Uniform Federal Accessibility Standards that were previously required on Land and Water Conservation Fund projects. Upon request the NGPC can provide guidelines, however, your consultant should already have them.

D. Awarding a Contract. Contracts must be awarded to the low, qualified bidder, whose bid conforms with all of the terms and conditions of the invitation for bids. Submit one (1) signed contract to NGPC.

E. Change Orders. All change orders will be reviewed and approved by NGPC. Submit one (1) copy for staff review, if possible, prior to signing, then forward one (1) copy of the fully executed order.

IMPORTANT NOTE: The sponsor must first obtain written permission from the Nebraska Game and Parks Commission to award any contract to a bidder whose bid is:

1. **Higher than the apparent low bidder; or**

2. **When only one bid is received in response to the bid solicitation.**

3. **See I. Below.**

Written approval to award a contract under these circumstances will be given by the Nebraska Game and Parks Commission prior to actual award of the contract.

F. **Debarred/Suspended Contractors. Under no circumstances will a contract be awarded to any bidder who is debarred or suspended from doing business with the Federal government. The contractor must sign the certificate that is included with these instructions (See Attachment A). The signed certificate must be returned to this office, along with the signed contract. Each prospective contractor should sign the form and provide it with the proposal as assurance to the project sponsor that the contractor is not debarred or suspended from doing business with the federal government.**

G. **Notice of Contract Award. The sponsor must submit the Notice of Contract Award found on page 6 to the address given within ten (10) days after the award when the contract is $25,000 or more.**

H. **Conflict ofInterest.** No employee, office or agent of the project sponsor shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: 1) the employee, officer or agent; 2) any member of his immediate family; 3) his or her partner; or 4) an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The project sponsor's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

I. **Responsible Contractors.** Project sponsors will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources. If necessary, the sponsor may be required to submit the appropriate documentation that substantiates the reasons for not awarding a contract to such a contractor.

J. **Record Retention.** Project sponsors will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection and the basis for the contract price.

K. **Contracting with Small and Minority Business Firms, Women's Business Enterprises and Labor Surplus Area Firms. (From OMB Circular A-102, 43 CFR, Part 12. Federal Register, Vol. 53, No. 48, Friday, March 11, 1988, Rules and Regulations).**

The sponsor will take all necessary affirmative steps to assure that minority firms, women's business enterprises and labor surplus area firms are used when possible. Affirmative steps shall include:

1. **Placing qualified small and minority business and women's business enterprises on solicitation lists.**

2. **Assuring that small and minority business and women's business enterprises are solicited whenever they are potential sources.**
3. **Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business and women's business enterprises.**
4. **Establishing delivery schedules, where the requirement permits, which encourages participation by small and minority business and women's business enterprises.**
5. **Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.**
6. **Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.**

NOTE: See Attachment B.

SEND TO:

U.S. Department of Labor
Office of Federal Contract Compliance
106 South 15th Street - Room 808
Omaha NE 68102

NOTICE OF CONTRACT AWARD

1. **CONTRACTOR'S NAME:** _____

   ADDRESS: _____

   PHONE NUMBER: _____

2. **EMPLOYER IDENTIFICATION NUMBER:** _____
   (Social Security Number)

3. **DOLLAR AMOUNT OF CONTRACT:** _____

4. **ESTIMATED STARTING DATE:** _____

5. **GEOGRAPHIC AREAS IN WHICH CONTRACT IS TO BE PERFORMED:**

_____
County City (If Applicable) State

_____**Sponsors Name**

_____**Signature**

_____**Title**

_____**Date**

IV. ARCHITECT/ENGINEER RESPONSIBILITIES

The following items, where required, are to be in the specification document for construction or for material only projects. Refer to Attachment C for a checklist of requirements that need to be in the specification document for projects of varying estimated costs. Material only contracts, of course, do not need employment provisions, so only the provisions of A, C, D & E apply to a project of that nature.

A. Notice to Bidders. The public notice that will be in the newspaper must contain the following things:

1. **Project Name**
2. **Project Number - NPS 31-00--- (NPS stands for National Park Service)**
3. **This statement Verbatim: "Federal Funds will be used to assist with the development of this project."**

B. Copeland Anti-Kickback Act (18 U.S.C. 874) and as Supplemented in Department of Labor Regulations (29 CFR, Part 3). Include the following statement verbatim in the specification for all contracts for construction and repair regardless of contract cost:

"The contractor agrees that he will not induce, by any means, any person employed in the construction, completion or repair of public work to give up any part of the compensation to which he is otherwise entitled."

C. Breach of Contract. Contracts shall contain such contractual provisions or conditions which allow for administrative, contractual or legal remedies in instances in which contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (AIA or NSPE Standard General Conditions are acceptable standards for this purpose).

D. Access to Records. Include the following statement verbatim in the specification document:

"The contractor agrees that the owners, the Federal grantor agency (NPS), the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audit, examination, excerpts and transcriptions.

E. Termination. All contracts in excess of $25,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor. (Again, AIA or NSPE Standard General Conditions are acceptable.)

F. Bonding Requirements (For Contracts or Subcontracts Exceeding $100,000).

1. **A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, executes such contractual documents as may be required with the time specified.**

2. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such a contract.

3. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

G. Federal Water Pollution Control Act (For Contracts Exceeding $100,000). The contractor is required to comply with the provisions of the Clean Air Act of 1970 (42 U.S.C. 1857 et. seq.).

H. Equal Employment Opportunity Contract Compliance. These contractor requirements are applicable to construction subcontracts to be awarded that involve workers and that exceed $25,000. Include all of Attachment B in the specification document.

I. Debarment and Suspension Form. For all contracts which are expected to equal $25,000 or more, the contractor must complete the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion" form with the bid. Project sponsors must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order No. 12549, "Debarment and Suspension" (see Attachment A).

J. Contract Work Hours and Safety Standards Act. Include the following statement verbatim in the specification documents for construction contracts awarded by sponsors in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers:

"Compliance with Sections 103 & 107 of the Act (40 U.S.C. 327-330) as supplemented by Department of Labor Regulations (29 CFR, Part 5). The provisions of the Act are as follows:

1. Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek, whichever is greater.

2. Violation. Liability for unpaid wages; liquidated damages in the event of any violation of the clauses set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefore to be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards employed in violation of the clause set forth in subparagraph (1) of this paragraph in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

3. **Withholding for Unpaid Wages and Liquidated Damages. The National Park Service, or its designee, shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.**

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

HEALTH AND SAFETY

1. **No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.**

2. **The contractor shall comply with regulations issued by the Secretary of labor pursuant to Title 29, Part 1926 (formerly part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract work Hours and Safety Standards Act (P.L. 91-54.83, Stat 96).**

3. **The contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor. The contractor will take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.**

K. **<u>Davis-Bacon Act</u>. The provisions of this Act do not apply to the Land and Water Conservation Fund program.**

L. **<u>Executive Order No. 11246</u>. The provisions of this order must be included in the specifications verbatim as found on pages 11-22. Such provisions include the Certification of Non-Segregated Facilities, the Equal Opportunity Clause, Notice of Requirement for Affirmative Action to Ensure Equal Opportunity, Standard Federal Equal Employment Opportunity Construction Contract Specifications and Reporting Requirements for all projects over $25,000 that are all included in the instructions.**

M. Copyrights. The Federal awarding agency (NPS) reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

1. The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

2. Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

N. Brand Name. Specifying brand name only is prohibited. Instead, the term "or equal" should be provided in the specification. Inform the G & PC if the item is available only from a single source.

CERTIFICATION OF NON-SEGREGATED FACILITIES

The federally-assisted construction contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location under his control where segregated facilities are maintained. The federally-assisted construction contractor certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments and that he will not permit his employees to perform their services at any location under his control where segregated facilities are maintained. The federally-assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for such employees which are segregated by explicit directive, or are in fact segregated on the basis of race, creed, color or national origin, because of habit, local custom or otherwise. The federally-assisted construction contractor agrees that (except where he has obtained identical certifications from proposed contractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $25,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certification in his files.

_____ _____

(Signature) **(Date)**

_____

(Name and Title of Signer - Please Type or Print)

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

EQUAL OPPORTUNITY CLAUSE

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

A. **The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color or national origin, such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.**

B. **The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.**

C. **The contractor will send to each labor union or representative of workers which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union, or worker's representative of the contractor's commitments under this section, and shall post copies of notices in conspicuous places available to employees and applicants for employment.**

D. **The contractor will comply with all provisions of Executive Order No. 11246, as amended, and the rules, regulations and relevant orders of the Secretary of Labor.**

E. **The contractor will furnish all information and reports required by Executive Order No. 11246, as amended, and by the rules, regulations and orders of the Secretary of Labor or pursuant thereto, and will permit access to his books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.**

F. **In the event of the contractor's non-compliance with the non-discrimination clauses of this contract or with any such rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with the procedures authorized in Executive Order No. 11246, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246, as amended, or by rules, regulations or order of the Secretary of Labor, or as otherwise provided by law.**

G. **The contractor will include the provisions of Paragraphs (A) - (G) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246, as amended, so that such provisions will be binding upon each subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for non-compliance: Provided, however, that in the event the contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interest of the United States.**

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER NO. 11246)

1 As used in these specifications:

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

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

c "Employer Identification Number" means the Federal Social Security Number used on the employer's Quarterly Federal Tax Return, U.S. Treasury Department, Form 941;

d "Minority" includes:

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

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

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

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

2 Whenever the contractor or subcontractor, at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $25,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which the contract resulted.

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

4 The contractor shall implement the specific affirmative action standards provided in paragraphs (7a) through (7p) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The contractor is expected to make substantially uniform progress towards its goal in each craft during the period specified.

5 Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligation under these specifications. Executive Order No. 11246, or the regulations promulgated pursuant thereto.

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

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

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

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

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

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

e Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor

shall provide notice of these programs to the sources compiled under (7b) above.

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

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

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

i Direct its recruitment efforts, both oral and written, to minority, female and community organizations to schools with minority and female students and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment sources, the contractor shall send written notification to organizations such as the above, describing the opening, screening procedures and tests to be used in the selection process.

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

k Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR, Part 60-3.

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

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

n Ensure that all facilities and company activities are non-segregated except that separate or singular-use toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

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

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

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

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

10 The contractor shall not use the goals and timetables of affirmative action standards to discriminate against any person because of race, color, religion, sex or national origin.

11 The contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order No. 11246, as amended.

12 The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed for ordered pursuant to Executive Order No. 11246, as amended, and its implementing regulations, by the office of Federal Contract Compliance Program. Any contractor who fails to carry out such sanction and penalties shall be in violation of these specifications and Executive Order No. 11246, as amended.

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

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

15 Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for hiring of local

or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

REPORTING REQUIREMENTS FOR ALL PROJECTS OVER $25,000
Monthly Employment Utilization Report

All prime contractors and subcontractors having 50 or more employees and performing work on federally-assisted projects are required to complete cc 257, listing their aggregate work force in each trade on all projects both federally and non-federally funded in the designated area. Each prime and subcontractor must also attach a listing of projects (both federal and non-federal in the designated area must be included. The accompanying list must provide the following information:

1 Name and location of the project.

2 Owner of the project (City, County or Private).

3 Project Number, if any.

4 Percentage complete.

5 Dollar amount of contract.

6 Estimated date of completion.

Prime contractors are responsible for collecting cc257 and the listing of all projects (both federal and non-federal in excess of $25,000) from each of his subcontractors performing work on this project. The prime contractors will then forward their cc 257 and all of the subcontractor's cc257s as well as project list information to the U.S. Department of Labor, Federal Office Building, Room 2000, 911 Walnut street, Kansas City MO 64106

PLEASE NOTE:

Failure to submit the cc 257 by the fifth day of each month constitutes non-compliance with Executive Order No. 11246, as amended. Non-compliance is grounds for the issuance of a legal show cause notice for an informal hearing, authorized by OFCCP Rules and Regulations 41 CFR 60-1.7. Such a hearing could result in cancellation, termination or suspension of the contract.

EEO-1 REPORTING REQUIREMENTS

1 Each construction and non-construction prime contractor and first tier subcontractor who has 50 or more employees on total corporate or company payroll and signs a direct federal or financially-assisted contract, subcontract or purchase order in the amount of $50,000 or more, shall file annually, in triplicate, on or before the 31st day of March, complete and accurate reports on Standard Form 100, Employer Information Reports (EEO-1) to the Joint Reporting Committee.

2 Each contractor or subcontractor required in paragraph (1) above shall submit an EEO-1 to the Joint Reporting Committee WITHIN 30 DAYS after award of such contract, subcontractor or purchase order as mentioned in paragraph (1) above, UNLESS such contractor or subcontractor has already submitted an EEO-1 report to the Joint Reporting Committee within 12 months preceding the date of award of a financially-assisted contract.

3 Failure to file timely, complete and accurate reports, as required in paragraphs (1) and (2) above constitutes non-compliance with the contractor's or subcontractor's obligations under Executive Order No. 11246, as amended, and is grounds for the imposition by the U.S. Department of Labor of any sanctions authorized by Executive Order No. 11246, as amended, and other rules and regulations pursuant thereto.

NOTE:

Contractors and subcontractors may obtain EEO-1 reporting forms by writing to: Joint Reporting Committee, 2401 " E" Street, Northwest Washington DC 20506.

POSTING REQUIREMENTS

Immediately after construction begins and for the duration of construction the successful bidder, prime contractor or subcontractor must post in conspicuous places at the project site available to employees and applicants for employment, EEO notices which shall be provided by the owner after contract award.

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER NO. 11246)

1. The Offerer's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" as set forth herein.

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

GOALS FOR FEMALE PARTICIPATION IN EACH TRADE

Until further notice, the goal of 6.9% for each trade is applicable statewide.

GOALS FOR MINORITY PARTICIPATION IN EACH TRADE

Until further notice, the goals for each trade are shown by Area and County. All counties are in Nebraska unless otherwise shown.

103 South Sioux City, IA (Parts in IA, NE & SD):

Dakota	1.9
All Other Counties	1.2

Antelope	Madison
Cedar	Pierce
Cuming	Stanton
Dakota	Thurston
Dixon	Wayne
Knox	

142 LINCOLN AREA

Lancaster	2.8
All Other Counties	1.9

Butler	Pawnee
Fillmore	Polk
Gage	Richardson
Jefferson	Saline
Johnson	Seward
Nemaha	Thayer
Otoe	York

143 OMAHA AREA:

Douglas, Sarpy and Pottawattamie IA	7.6
All Other Counties	5.3

Cass	Adams IA
Burt	Audubon IA
Colfax	Fremont IA
Dodge	Harrison IA
Platte	Mills IA
Saunders	Montgomery IA
Washington	Page IA
	Shelby IA
	Taylor IA

144 **GRAND ISLAND AREA:**

All Counties 1.4

Adams	Furnace
Arthur	Garfield
Blaine	Gosper
Boone	Grant
Boyd	Greeley
Brown	Hall
Buffalo	Hamilton
Chase	Harlan
Cherry	Hayes
Clay	Hitchcock
Custer	Holt
Dawson	Hooker
Dundy	Howard
Franklin	Kearney
Frontier	Keith
	Keya Paha

SCOTTSBLUFF AREA:

All Counties 5.3

Lincoln	Banner	Kimbl
Logan	Box Butte	Morrill
Loup	Cheyenne	Scotts Bluff
McPherson	Dawes	Sheridan
Merrick	Deuel	Sioux
Nance	Garden	
Nuckolls		
Perkins		
Phelps		
Red Willow		
Rock		
Sherman		
Thomas		
Valley		
Webster		
Wheeler		

These goals are applicable to all the contractor's construction work (whether or not it is federal or federally-assisted) performed in the covered area.

The contractor's compliance with the Executive Order and the regulations in 41 CFR, Part 60-4 shall be based on its implementation of the Equal Employment Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 50-4.3(a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR, Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The contractor shall provide written notification to the Director of the Office of Federal Contract Compliance program within ten (10) working days of award of any construction subcontract in excess of $25,000 in any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor, employer identification number, estimated dollar amount of the subcontract, estimated starting and completion dates of the subcontract, and the geographical area in which the contract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is:

* 6.9	142	2.8
(State)	(City)	(County)

* (NOTE TO ARCHITECTS/ENGINEERS: FILL IN THE BLANKS BEFORE SENDING SPECIFICATIONS FOR REVIEW.)

Attachment A

U.S. DEPARTMENT OF THE INTERIOR

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

LOWER TIER COVERED TRANSACTIONS

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This certification is required by the regulations implementing Executive Order No. 12549, Debarment and Suspension, 43 CFR, Part 12, Section 12.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations are included in the proposal package. For further assistance in obtaining a copy of the regulations, contact the U.S. Department of the Interior, Acquisition and Assistance Division, Office of Acquisition and Property Management, 18th and C Streets, N.W., Washington DC 20240.

BEFORE COMPLETING CERTIFICATION: READ INSTRUCTION ON REVERSE SIDE

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participants shall attach an explanation to this proposal.

==========

NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

==========

SIGNATURE *DATE*

INSTRUCTIONS FOR CERTIFICATION

1. *By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.*
2. *The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated, may pursue available remedies, including suspension and/or debarment.*
3. *The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.*
4. *The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order No. 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.*
5. *The prospective lower tier participant agrees by submitting this proposal, that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.*
6. *The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.*
7. *A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List (Tel.#).*
8. *Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.*
9. *Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal*

Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

REQUIREMENTS FOR EQUAL EMPLOYMENT OPPORTUNITY AND CONTRACT COMPLIANCE

CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES AND LABOR SURPLUS AREA FIRMS (FROM ATTACHMENT "O" OMB CIRCULAR A-102)

If any subcontracts are to be awarded, the prime contractor shall take affirmative steps to include the following:

1. *Include qualified small and minority businesses on solicitation lists.*

2. *Assure that small and minority businesses are solicited whenever they are potential sources.*

3. *When economically feasible, divide the total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.*

4. *Where the requirements permit, establish schedules which will encourage participation by small and minority businesses.*

5. *Use the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as required.*

CONTRACTORS PLEASE NOTE: A listing of potential sources to inform Minority/Women Contractors and a list of Minority-owned Construction Firms may be obtained from the Engineer or Architect.

LAND AND WATER CONSERVATION FUND
COMPLIANCE CHECKLIST

REQUIREMENTS	Contract Amount: Less Than $25,000	$25,000 to $99,000	$100,000 to $1,000,000
SPONSOR'S RESPONSIBILITIES			
A. Contracting with Small and Minority or Women's Business		X	X
B. Handicapped Compliance	X	X	X
C. Notice of Contract Award		X	X
MINIMUM SPECIFICATION ELEMENTS - CONSULTANT RESPONSIBILITIES			
A. Notice to Bidders		X 5	X
B. Copeland Anti-Kickback Act	X	X	X
C. Breach of Contract Provisions	X	X 5	X
D. Contract Works Hours Act	X	X	X
E. Access to Records Provisions	X	X 5	X
F. Copyright Provisions	X	X	X
G. Contract Termination Provisions		X 5	X
H. Suspension and Debarment		X 5	X
I. Affirmative Action Requirements		X	X
J. Bond Requirements			X
K. Water Pollution Control Act			X
L. Clean Air Act			X

NOTE: For all contracts less than $25,000 **whether formally advertised or not,** the items listed above, "Less than $25,000" column, **must be** included in the contract. Material only contracts do not need labor provisions in the specification.

5Include these in the specifications for material only procurements.

DOCUMENT SUBMITTAL CHECK LIST

PLANS AND SPECIFICATIONS - Send two (2) copies to the NGPC for review and further guidance.

SIGNED CONTRACT - Send one (1) signed contract, and bonds if required, for each successful bidder.

CHANGE ORDER - Send one (1) copy of each Change Order for review and approval.

DEPARTMENT OF ENVIRONMENTAL QUALITY APPROVAL - Send one (1) copy of the approval letter.

STATE ELECTRICAL DIVISION REPORT - Send one (1) copy of the final inspection.

DEPARTMENT OF HEALTH APPROVAL - Send one (1) copy of the approval letter.

DEBARMENT/SUSPENSION CERTIFICATE - Send one (1) copy having the signature of the successful contractor(s).

INSTRUCTIONS TO BIDDERS

CITY OF LINCOLN, NEBRASKA

PURCHASING DIVISION

1. BIDDING PROCEDURE

1.1 Bidder shall submit two (2) complete sets of the bid documents and all supporting material. All appropriate blanks shall be completed. Any interlineation, alteration or erasure on the specification document shall be initialed by the signer of the bid. Bidder shall not change the proposal form nor make additional stipulations on the specification document. Any amplified or qualifying information shall be on the bidder's letterhead and firmly attached to the specification document.

1.2 Bid prices shall be submitted on the Proposal Form included in the bid document.

1.3 Bidders may submit a bid on an "all or none" or "lump sum" basis, but should also submit a quotation on an item-by-item basis. Bidding documents shall be clearly marked indicating the kind of proposal being submitted.

1.4 Each bid must be legibly printed in ink or by typewriter, include the full name, business address, and telephone number of the bidder; and be signed in ink by the bidder.

1.5 A bid by a firm or organization other than a corporation must include the name and address of each member.

1.6 A bid by a corporation must be signed in the name of such corporation by a duly authorized official thereof.

1.7 Any person signing a bid for a firm, corporation, or other organization must show evidence of his authority so to bind such firm, corporation, or organization.

1.8 Bids received after the time and date established for receiving bids will be rejected.

2. BIDDER'S SECURITY

2.1 Bid security, as a guarantee of good faith, in the form of a certified check, cashier's check, or bidder's bond, may be required to be submitted with this bid document, as indicated of the Proposal Form.

2.2 If alternate bids are submitted, only one bid security will be required, provided the bid security is based on the amount of the highest gross bid.

2.3 Such bid security will be returned to the unsuccessful bidders when the award of bid is made.

2.4 Bid security will be returned to the successful bidder(s) as follows:

2.4.1 For single order bids with specified quantities: upon the delivery of all equipment or merchandise, and upon final acceptance by the City.

2.4.2 For all other contracts: upon approval by the City of the executed contract and bonds.

2.5 City shall have the right to retain the bid security of bidders to whom an award is being considered until either:

2.5.1 A contract has been executed and bonds have been furnished.

2.5.2 The specified time has elapsed so that the bids may be withdrawn.

2.5.3 All bids have been rejected.

2.6 Bid security will be forfeited to the City as full liquidated damages, but not as a penalty, for any of the following reasons, as pertains to this specification document:

2.6.1 If the bidder fails to deliver the equipment or merchandise in full compliance with the accepted proposal and specifications.

2.6.2 If the bidder fails or refuses to enter into a contract on forms provided by the City, and/or if the bidder fails to provide sufficient bonds or insurance within the time period as established in this specification document.

3. EQUAL OPPORTUNITY

3.1 Each bidder agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, age, or marital status. Bidder shall fully comply with the provisions of Chapter 11.08 of the Lincoln Municipal Code.

3.2 Successful bidder will be required to comply with the provisions of the City's Affirmative Action Policy (Contract Compliance, Sec. 1.16).

3.3 The Equal Opportunity Officer will determine compliance or non-compliance with the City's Affirmative Action Policy upon a complete and substantial review of successful bidder's equal opportunity policies, procedures and practices.

4. DATA PRIVACY

4.1 Bidder agrees to abide by all applicable State and Federal laws and regulations concerning the handling and disclosure of private and confidential information concerning individuals and corporations as to inventions, copyrights, patents and patent rights.

4.2 The bidder agrees to hold the City harmless from any claims resulting from the bidder's unlawful disclosure or use of private or confidential information.

5. BIDDER'S REPRESENTATION

5.1 Each bidder by signing and submitting a bid, represents that the bidder has read and understands the specification documents, and the bid has been made in accordance therewith.

5.2 Each bidder for services further represents that the bidder is familiar with the local conditions under which the work is to be done and has correlated the observations with the requirements of the bid documents.

6. INDEPENDENT PRICE DETERMINATION

6.1 By signing and submitting this bid, the bidder certifies that the prices in this bid have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder prior to bid opening directly or indirectly to any other bidder or to any competitor; no attempt has been made, or will be made, by the bidder to induce any person or firm to submit, or not to submit, a bid for the purpose of restricting competition.

7. CLARIFICATION OF SPECIFICATION DOCUMENTS

7.1 Bidders shall promptly notify the Purchasing Agent of any ambiguity, inconsistency or error which they may discover upon examination of the specification documents.

7.2 Bidders desiring clarification or interpretation of the specification documents shall make a written request which must reach the Purchasing Agent at least seven (7) calendar days prior to the date and time for receipt of bids.

7.3 Interpretations, corrections and changes made to the specification documents will be made by written addenda.

7.4 Oral interpretations or changes to the Specification Documents made in any other manner, will not be binding on the City; and bidders shall not rely upon such interpretations or changes.

8. ADDENDA

8.1 Addenda are written instruments issued by the City prior to the date for receipt of bids which modify or interpret the specification document by addition, deletion, clarification or correction.

8.2 Addenda will be mailed or delivered to all who are known by the City to have received a complete set of specification documents.

8.3 Copies of addenda will be made available for inspection at the office of the Purchasing Agent.

8.4 No addendum will be issued later than forty-eight (48) hours prior to the date and time for receipt of bids, except an addendum withdrawing the invitation to bid, or an addendum which includes postponement of the bid.

8.5 Bidders shall ascertain prior to submitting their bid that they have received all addenda issued, and they shall acknowledge receipt of addenda on the proposal form.

9. ANTI-LOBBYING PROVISION

9.1 During the period between the bid close date and the contract award, bidders, including their agents and representatives, shall not directly discuss or promote their bid with any member of the City Council or City Staff except in the course of City-sponsored inquiries, briefings, interviews, or presentations, unless requested by the City.

10. BRAND NAMES

10.1 Wherever in the specifications or proposal form brand names, manufacturer, trade name, or catalog numbers are specified, it is for the purpose of establishing a grade or quality of material only; and the term "or equal" is deemed to follow.

10.2 It is the bidder's responsibility to identify any alternate items offered in the bid, and prove to the satisfaction of the City that said item is equal to, or better than, the product specified.

10.3 Bids for alternate items shall be stated in the appropriate brand on the proposal form, or if the proposal form does not contain blanks for alternates, bidder MUST attach to the specification documents on Company letterhead a statement identifying the manufacturer and brand name of each proposed alternate, plus a complete description of the alternate items including illustrations, performance test data and any other information necessary for an evaluation. The bidder must indicate any variances by item number from the specification document no matter how slight. Bidder must fully explain the variances from the specification document, since brochure information may not be sufficient.

10.4 If variations are not stated in the proposal, it will be assumed that the item being bid fully complies with the City's specifications.

11. DEMONSTRATIONS/SAMPLES

11.1 Bidders shall demonstrate the exact item(s) proposed within seven (7) calendar days from receipt of such request from the City.

11.2 Such demonstration can be at the City delivery location or a surrounding community.

11.3 If bidder does not have an item in the area, it will be at the bidder's expense to send appropriate City personnel to the nearest location to view and inspect proposed item(s).

11.4 If items are small and malleable, and the bidder is proposing an alternate product, the bidder MUST supply a sample of the exact item. Samples will be returned at bidder's expense after receipt by the City of acceptable goods. Bidders must indicate how samples are to be returned.

12. DELIVERY

12.1 Each bidder shall state on his proposal form the date upon which he can make delivery of all equipment or merchandise. Time required for delivery is hereby made an essential element of the bid.

12.2 The City reserves the right to cancel orders, or any part thereof, without obligation, if delivery is not made within the time(s) specified on the proposal form.

12.3 All bids shall be based upon **inside** delivery of the equipment or merchandise F.O.B. the City at the location specified by the City, with all transportation charges paid.

13. WARRANTIES, GUARANTEES AND MAINTENANCE

13.1 Copies of the following documents must accompany the bid proposal for all items being bid:

13.1.1 Manufacturer's warranties and/or guarantees.

13.1.2 Bidder's maintenance policies and associated costs.

13.2 As a minimum requirement of the City, the bidder will guarantee in writing that any defective components discovered within a one (1) year period after the date of acceptance shall be replaced at no expense to the City. Replacement parts of defective components shall be shipped at no cost to the City. Shipping costs for defective parts required to be returned to the bidder shall be paid by the bidder.

13.3 Bidder Warrants and represents to the City that all software/firmware/ hardware/equipment /systems developed, distributed, installed or programmed by Bidder pursuant to this Specification and Agreement.

13.3.1 That all date recognition and processing by the software/firmware/hardware/equipment/system will include the four-digit-year format and will correctly recognize and process the date of February 29, and any related data, during Leap years; and

13.3.2 That all date sorting by the software /firmware/hardware/ equipment/system that includes a “year category” shall be done based on the four-digit-year format. Upon being notified in writing by the City of the failure of any software/ firmware/

hardware /equipment /systems to comply with this Specification and Agreement, Contractor will, within 60 days and at no cost to the City, replace or correct the non-complying software/ firmware/ hardware/ equipment/ systems with software/firmware/ hardware/equipment/ systems that does comply with this Specification and Agreement.

13.3.3 No Disclaimers: The warranties and representations set forth in this section 13.3 shall not be subject to any disclaimer or exclusion of warranties or to any limitations of Licensor's liability under this Specification and Agreement.

14. ACCEPTANCE OF MATERIAL

14.1 All components used in the manufacture or construction of materials, supplies and equipment, and all finished materials, shall be new, the latest make/model, of the best quality, and the highest grade workmanship.

14.2 Material delivered under this proposal shall remain the property of the bidder until:

14.2.1 A physical inspection and actual usage of this material is made and found to be acceptable to the City; and

14.2.2 Material is determined to be in full compliance with the specifications and accepted proposal.

14.3 In the event the delivered material is found to be defective or does not conform to the specification documents and accepted proposal, then the City reserves the right to cancel the order upon written notice to the bidder and return materials to the bidder at bidder's expense.

14.4 Successful bidder shall be required to furnish title to the material, free and clear of all liens and encumbrances, issued in the name of the City of Lincoln, Nebraska, as required by the specification documents or purchase orders.

14.5 Selling dealer's advertising decals, stickers or other signs shall not be affixed to equipment. Vehicle mud flaps shall be installed blank side out with no advertisements. Manufacturer's standard production forgings, stampings, nameplates and logos are acceptable.

15. BID EVALUATION AND AWARD

15.1 The signed bid proposal shall be considered an offer on the part of the bidder. Such offer shall be deemed accepted upon issuance by the City of purchase orders, contract award notifications, or other contract documents appropriate to the work.

15.2 No bid shall be modified or withdrawn for a period of ninety (90) calendar days after the time and date established for receiving bids, and each bidder so agrees in submitting the bid.

15.3 In case of a discrepancy between the unit prices and their extensions, the unit prices shall govern.

15.4 The bid will be awarded to the lowest responsive, responsible bidder whose proposal will be most advantageous to the City, and as the City deems will best serve their requirements.

15.5 The City reserves the right to accept or reject any or all bids; to request rebids; to award bids item-by-item, by groups, or "lump sum"; to waive irregularities and technicalities in bids; such as shall best serve the requirements and interests of the City.

16. INDEMNIFICATION

16.1 The bidder shall indemnify and hold harmless the City, its members, its officers and employees from and against all claims, damages, losses, and expenses, including, but not limited to attorney's fees arising out of or resulting from the performance of the contract, provided that any 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 goods, materials and equipment furnished under this contract) including the loss or use resulting therefrom; is caused in whole or part by any negligent act or omission of the bidder, any subcontractor, or anyone directly or indirectly employed by any one of them or anyone for whose acts made by any of them may be liable, regardless of whether or not it is caused by a party indemnified hereunder.

16.2 In any and all claims against the City or any of its members, officers or employees by an employee of the bidder, any subcontractor, anyone directly or indirectly employed by any of them or by anyone for whose acts made by any of them may be liable, the indemnification obligation under paragraph 16.1 shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable by or for the bidder or any subcontractor under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.

17. TERMS OF PAYMENT

17.1 Unless other specification provisions state otherwise, payment in full will be made by the City within thirty (30) calendar days after all labor has been performed and all equipment or other merchandise has been delivered, and all such labor and equipment and other materials have met all contract specifications.

18. LAWS

18.1 The Laws of the State of Nebraska shall govern the rights, obligations, and remedies of the Parties under this proposal and any agreement reached as a result of this process.

19. AFFIRMATIVE ACTION

19.1 The City of Lincoln-Lancaster County Purchasing Division provides equal opportunity for all bidders and encourages minority businesses and women's business enterprises to participate in our bidding process.

20. LIVING WAGE

20.1 The bidders agree to pay all employees employed in the performance of this contract, a base wage of not less than the City Living Wage per section 2.81.010 of the Lincoln Municipal Code. This wage is subject to change up or down every July.

INSURANCE REQUIREMENTS
FOR ALL CITY CONTRACTS

1. GENERAL PROVISIONS

A. **Indemnification.** The Contractor shall indemnify and save harmless the City of Lincoln, Nebraska from and against all losses, claims, damages, and expenses, including attorney's fees, arising out of or resulting from the performance of the contract that results in bodily injury, sickness, disease, death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom and is caused in whole or in part by the Contractor, any subcontractor, any directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This section will not require the Contractor to indemnify or hold harmless the City of Lincoln for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence of the City of Lincoln, Nebraska.

B. **Approved Coverage Prior to Commencing Work/Subcontractors Included.** Contractor shall purchase and maintain in place insurance to Protect Contractor and City against all liabilities and hazards as provided in this article throughout the duration of the Contract. Contractor shall not commence work under this contract until the Contractor has obtained all insurance required under this Section and such insurance has been approved by the City Attorney for the City of Lincoln, nor shall the Contractor allow any subcontractor to commence work on any subcontract until all similar insurance required of the subcontractor has been so obtained and approved.

C. **Occurrence Basis Coverage.** All insurance shall be provided on an ***occurrence basis*** and not on a claims made basis, except for hazardous materials, errors and omissions, or other coverage not reasonably available on an occurrence basis; provided that all such claims made coverage is subject to the prior written approval of the City Attorney and must be clearly indicated as such in any certificate showing coverage.

D. **Authorized and Rated Insurers Required.** All insurance coverage are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of no less than A:VII unless specific approval has been granted by the City Attorney.

E. **Certificates Showing Coverage.** All certificates of insurance shall be filed with the City Attorney, and may utilize an appropriate standard ACORD Certificate of Insurance form showing the specific limits of insurance coverage required by this Article; provided that restrictions, qualifications or declarations inconsistent with the requirements of this Article shall not relieve the Contractor from providing insurance as required herein. Such certificates shall show the City of Lincoln as additional insured, including by specific endorsement where necessary, as indicated in the following requirements. Such certificate shall specifically state that the related insurance policies are to be endorsed to require the insurer to provide the City of Lincoln thirty days, notice of cancellation, non-renewal or any material reduction in the stated amounts or limits of insurance coverage.

F. **Terminology.** The terms “insurance,” “insurance policy,” or “coverage” as used in this article are used interchangeably and shall have the same meaning as “insurance” unless the context clearly requires otherwise. References to “ISO®” forms are merely for convenience and ease of reference, and an equivalent or better form as determined acceptable by the City Attorney may be used. (Note: ISO® is a registered trademark of ISO Properties, Inc.)

2. INSURANCE REQUIREMENTS

A. **Scope of Required Coverage**. The Contractor shall take out and maintain during the life of Contract such insurance in the forms and minimum amounts as specified in this Article and as will protect Contractor and City from the following claims arising out of or resulting from or in connection

with the Contractor's operations, undertakings or omissions directly or indirectly related to the Contract, whether by the Contractor or any Subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

(1) Claims under workers' compensation, disability benefit, or other employee benefit acts;

(2) Claims arising out of bodily injury, occupational sickness or disease, or death of an employee or any other person;

(3) Claims customarily covered under personal injury liability coverage;

(4) Claims other than to the work itself arising out of an injury to or destruction of tangible property, including the loss of use resulting therefrom;

(5) Claims arising out of ownership, maintenance or use of any motor vehicle;

(6) Railroad protective liability coverage in the event the contract involves work to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing.

B. **Worker's Compensation Insurance and Employer's Liability Insurance**. The Contractor shall provide applicable statutory Worker's Compensation Insurance with minimum limits as provided below covering all Contractor's employees, and in the case of any subcontracted work, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for Subcontractor's employees.

The Contractor shall provide Employer's Liability Insurance with minimum limits as provided below placed with an insurance company authorized to write such insurance in all states where the Contractor will have employees located in the performance of this contract, and the Contractor shall require each Subcontractor similarly to maintain Employer's Liability Insurance on the Subcontractor's employees.

Coverage	**Listing**	**Min Amt**	**Notes**
Worker's Comp.			
	State	Statutory	
	Applicable Federal	Statutory	
Employer's Liability			
	Bodily Injury by accident	$500,000	each accident
	Bodily Injury by disease	$500,000	each employee
	Bodily Injury	$500,000	policy limit

C. Commercial General Liability Insurance.

(1) The Contractor shall provide Commercial General Liability Insurance in a policy form providing no less comprehensive and no more restrictive coverage than provided under the ISO® form CG00010798 or newer with standard exclusions "a" through "o" and with minimum limits as provided below. Any other exclusions that operate to contradict or materially alter the standard exclusions shall be specifically listed on the certificate of insurance and shall be subject to the prior written approval of the City Attorney.

Coverage	Min Amt	Notes
General	$2,000,000	Aggregate
Products and Completed Operations	$2,000,000	Aggregate
Personal and Advertising Injury	$1,000,000	
Each Occurrence	$1,000,000	
Fire Damage Limit	$ 100,000	any one fire
Medical Damage Limit	$ 10,000	any one person

(2) The required Commercial General Liability Insurance shall also include the following:

- Coverage for all premises and operations
- Endorsement to provide the general aggregate per project endorsement
- Personal and advertising injury included
- Operations by independent contractors included
- Contractual liability coverage included
- X.C.U. Coverage including coverage for demolition of any building or structure, collapse, explosion, blasting, excavation and damage to property below the surface of ground.
- Any fellow employee exclusions shall be deleted
- Coverage shall not contain an absolute pollution exclusion, and applicable remaining coverage shall apply for pollution exposures arising from products and completed operations.
- Coverage for products and completed operations maintained for duration of work and shall be maintained for a minimum of three years after final acceptance under the Contract or the warranty period for the same whichever is longer, unless modified in any Special Provisions.
- Contractual Liability coverage shall include contractually assumed defense costs in addition to any policy limits.

(3) If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing, Railroad Contractual Liability Endorsement (ISO® form CG24170196 or newer).

(4) City may at its sole option, and in lieu of being additional insured on the Contractor's policy, by written requirement in the Special Provisions or by written change order, require Contractor to provide a separate Owner's Protective liability policy. The premium cost to obtain such insurance shall be as paid as provided in the Special Provision or change order, with any related cost savings as reasonably determined by the City being reimbursed or paid to the City.

D. Vehicle liability insurance coverage.

- The Contractor shall provide reasonable insurance coverage for all owned, non-owned, hired and leased vehicles with specific endorsements to include contractual liability coverage and delete any fellow employee exclusion.

- If specifically required in the Special Provisions, the required coverage shall also include an endorsement for auto cargo pollution (ISO® form CA 99 48).

E. Railroad Protective Liability. If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing or otherwise required by the Special Provisions or applicable requirements of an affected railroad, the Contractor shall provide Railroad Protective Liability Insurance naming the affected railroad/s as insured with

minimum limits for bodily injury and property damage of $2,000,000 per occurrence, $6,000,000 aggregate, or such other limits as required in the Special Provisions or by the affected railroad. The original of the policy shall be furnished to the railroad and a certified copy of the same furnished to the City Attorney's office prior to any related construction or entry upon railroad premises by the Contractor or for work related to the Contract.

F. **Umbrella or Excess Insurance.** The Contractor shall provide Umbrella or Excess insurance coverage with minimum coverage limits of $3,000,000 each occurrence and aggregate.

G. **City included as Insured on Contractor's Policy – Endorsements required.**
The Contractor shall provide adequate written documentation, including applicable ACORD certificates, declarations pages or other acceptable policy information demonstrating that the City is included as an additional insured along with the Contractor with respect to all of the coverages required in this "Section 2A Insurance Requirements," except for applicable Worker's Compensation coverage, to include all work performed for the City and specifically including, but not limited to, any liability caused or contributed to by the act, error, or omission of the Contractor, including any related subcontractors, third parties, agents, employees, officers or assigns of any of them. The documentation or endorsement shall specifically include the city as an additional insured for purposes of Products and Completed Operations. The inclusion of the City as additional insured shall be for coverage only on a primary basis for liability coverage, and no coverage shall contain a policy or other restriction or attempt to provide restricted coverage for the City, whether on an excess, contributory or other basis regardless of any other insurance coverage available to the City.

3. CONTRACTOR'S INDEMNITY – CONTRACTUAL LIABILITY INSURANCE

A. To the same extent as specified for minimum coverage requirements in Section 2 above, the required insurance shall include contractual liability coverage to include indemnification and hold harmless agreements and provisions in the related Contract Documents, specifically including the following provision:

(1) To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the City, its officers, agents, employees, volunteers and consultants from and against any and all claims, damages, losses, costs, and expenses, including but not limited to attorney's fees and costs arising out of or related to the Contract or the Contractor's activities, errors, or omissions related to the Contract including liabilities or penalties imposed by applicable, law, rule or regulation in connection therewith; provided that such claims, damages, losses, costs, and expenses, including but not limited to attorney's fees and costs:

- is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use therefrom, and

- is caused in whole or in part by any act or omission of the Contractor, any subcontractor, agent, officer, employee, or assigns of the same or by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in whole or in part by a party indemnified hereunder.

(2) Such indemnification shall not be construed to negate, abridge, limit or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section.

B. In any and all claims by any employee (whether an employee of the Contractor or subcontractor, or their respective agents or assigns by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable as an employer) in whole or in part against the City, its officers, agents, employees, volunteers or consultants, the above indemnification shall not be limited in any way by the amount of damages, compensation, benefits or other contributions payable by or on behalf of a the employer under Worker's Compensation statutes, disability benefit acts, or any other employee benefit or payment acts as the case may be.

C. The obligations of indemnification herein shall not include or extend to:

(1) Any outside engineer's or architect's professional errors and omissions involving the approval or furnishing of maps, drawings, opinions, reports, surveys, change orders, designs or specifications within the scope of professional services provided to the City and related to the Contract; and

(2) Any claims arising out of the negligence of the City to the extent the same is the sole and proximate cause of the injury or damage so claimed.

D. In the event of any litigation of any such claims shall be commenced against the City, Contractor shall defend the same at Contractor's sole expense upon notice thereof from the City. Contractor shall notify the insuring company that the City reserves and does not waive any statutory or governmental immunity and neither Contractor, nor Contractor's counsel whether employed by Contractor or by an insurer on behalf of the Contractor shall waive such defenses or enter into any settlement or other disposition requiring waiver of any defenses or immunity of the City without the express written consent of the City.

4. CONTRACTOR'S INSURANCE FOR OTHER LOSSES.

A. Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools owned, rented or used in connection with the Contract including any tools, machinery, equipment, storage devices, containers, sheds, temporary structures, staging structures, scaffolding, fences, forms, braces, jigs, screens, brackets, vehicles and the like owned or rented by Contractor, or Contractor's agents, subcontractors, suppliers, or employees.

B. In connection with the above, Contractor shall cause or require any applicable insurance related to physical damage of the same to provide a waiver of a right of subrogation against the City.

5. NOTIFICATION IN EVENT OF LIABILITY OR DAMAGE.

A. The Contractor shall promptly notify the City in writing and provide a copy of all claims and information presented to any of Contractor's insurance carrier/s upon any loss or claim or upon any occurrence giving rise to any liability or potential liability related to the Contract or related work. The notice to the City shall include pertinent details of the claim or liability and an estimate of damages, names of witnesses, and other pertinent information including the amount of the claim, if any.

B. In the event the City receives a claim or otherwise has actual knowledge of an any loss or claim arising out of the Contract or related work and not otherwise known to or made against the Contractor, the City shall promptly notify the Contractor of the same in writing, including pertinent details of the claim or liability; Provided, however the City shall have no duty to inspect the project to obtain such knowledge, and provided further that the City's obligations, if any, shall not relieve the Contractor of any liability or obligation hereunder.

6. PROPERTY INSURANCE/ BUILDER'S RISK.

A. The Contractor shall provide property insurance (a/k/a Builder's Risk or installation Floater) on all Projects involving construction or installation of buildings or structures and other projects where provided in the Special Provisions. Such insurance shall be provided in the minimum amount of the total contract sum and in addition applicable modifications thereto for the entire work on a replacement cost basis. Such insurance shall be maintained until the City completes final acceptance of the work as provided in the Contract. Such insurance shall be written and endorsed, where applicable, to include the interests of the City, Contractor, Subcontractors, Sub-subcontractors in the related work. The maximum deductible for such insurance shall be $5,000 for each occurrence, which deductible shall be the responsibility of the Contractor. Such insurance shall contain a "permission to occupy" endorsement.

B. All related Property Insurance shall be provided on a “Special Perils” or similar policy form and shall at a minimum insure against perils of fire including extended coverage and physical loss or damage including without limitation or duplication of coverage: flood, earthquake, theft, vandalism, malicious mischief, collapse, and debris removal, including demolition whether occasioned by the loss or by enforcement of applicable legal or safety requirements including compensation or costs for City’s related costs and expenses (as owner) including labor required as a result of such loss.

C. All related Property Insurance shall include coverage for falsework, temporary buildings, work stored off-site or in-transit to the site, whether in whole or in part. Coverage for work off-site or in-transit shall be a minimum of 10% of the amount of the policy.

D. The Contractor’s Property Insurance shall be primary coverage for any insured loss related to or arising out of the Contract and shall not be reduced by or coordinated with separate property insurance maintained by the City.

GENERAL CONDITIONS

City of Lincoln, Nebraska

10/29/92

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GENERAL TERMS

I. DEFINITIONS

A. Addendum (Addenda) shall mean the formal written instructions the City issued to prospective Bidders prior to the closing date for receipt of bids. Such instructions change or clarify the original plans or specifications, i.e., additions, deletions, modifications, or explanations.

B. Advertisement shall mean the announcement the City made as required by law, stating the time and place for receiving bids for the Work.

C. Architect shall mean the designated architect or engineer the City employed or contracted to provide design and other professional services related to the project. Architect shall include the Architect or the Architect's authorized representative.

D. Bid shall mean the properly signed and guaranteed written offer of the Bidder to perform the Work. Bid shall include Proposals or other formal written offers to perform the Work.

E. Bidder shall mean any individual, entity, firm, partnership, or corporation formally submitting a proposal to perform the Work or to supply materials for the Work. Bidder shall include any of the same acting through an authorized agent or representative.

F. Change Order shall mean a written instrument the Architect or Contract Administrator issues and the Mayor and the Contractor approve to state the City and Contractor's agreement for a change in the Work. All Change Orders shall specify the method of payment, if any. All Change Orders shall specify adjustments in the Contract Sum or Contract Time, if any.

G. City shall mean the City of Lincoln, Nebraska, and shall include the City's authorized representative.

H. Claim shall include a demand or assertion by the City or Contractor seeking an adjustment to or interpretation of Contract terms, payment, time or other matters related to the Contract. The party making the Claim shall substantiate any such Claim.

I. Construction Change Directive shall mean a written instrument the Architect or Contract Administrator issues and the City approves for a change in the Work within the scope of the Contract. Such changes shall include additions, deletions or other revisions. Such directive shall state a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. Construction Change Directives shall not invalidate the Contract in any event.

J. Contract Documents shall include the Contract, Conditions of the Contract (General, Supplementary and other conditions), Drawings, Specifications, addenda issued prior to execution of the Contract, other documents listed in the Contract and modifications or other agreements required to complete the work issued after execution of the Contract. Unless specifically excluded in the Contract, Contract Documents shall also include the bidding requirements, Advertisement, Instructions to Bidders, sample forms, Contractor's Bid and Addenda. See also: Subparagraphs XIV(D); and XXIV(A).

K. Contract shall mean the entire and integrated agreement between the City and Contractor. The parties may amend or modify the Contract only by Modification.

L. Contract Time shall mean the time the Contract Documents allow for Substantial Completion of the Work. Contract Time shall include any changes the City authorized by Modification.

M. Contractor shall mean the person or entity identified as such in the Contract. Contractor includes the Contractor or the Contractor's authorized representative. The contractor is always considered as an independent Contractor.

N. Day shall mean calendar day including Sundays and Holidays. (See Subparagraph II(G),Time)

O. Drawings shall include any graphic or pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, including: plans, elevations, sections, details, schedules and diagrams related to the Work.

P. Liquidated Damages shall mean the amount prescribed in the Contract Documents that the Contractor is to pay to the City for each Day after the contract completion date until the Substantial Completion Date. Liquidated Damages are actual damages the Contractor owes the City. The Contractor agrees such damages are not a penalty.

Q. May shall be permissive.

R. Mayor shall mean the Mayor of the City of Lincoln, Nebraska.

S. Modification shall include any (1) written amendment to the Contract that both the City and Contractor have signed, (2) Change Order, (3) Construction Change Directive or (4) authorized written order the Architect issued for a minor change in the Work.

T. Month shall mean a calendar month.

U. Product Data shall include illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information the Contractor furnishes to illustrate materials or equipment for the Work.

V. Project Manual shall mean the document assembled for the Work that may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

W. Project shall mean the total construction related to the Work provided by this Contract. The Project may include construction by the City or by separate contractors.

X. Samples shall include physical examples that represent materials, equipment or workmanship and establish standards for the Work.

Y. Shall shall be mandatory.

Z. Shop Drawings shall include drawings, diagrams, schedules and other data the Contractor or any Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor specially prepared to illustrate some portion of the Work.

AA. Specifications shall mean any written requirement for materials, equipment, construction systems, standards or workmanship for the Work, including performance of related services.

BB. Sub-subcontractor shall mean a person or entity a Subcontractor hires or contracts to perform a portion of the Work at the site. Sub-subcontractor includes any Sub-subcontractor or an authorized representative of the Sub-subcontractor.

CC. Subcontractor shall mean a person or entity the Contractor hires or contracts to perform a portion of the Work at the site. Subcontractor includes any Subcontractor or an authorized representative of the Subcontractor. Subcontractor shall not include any separate contractor the City hires or contracts or any subcontractors of such separate contractor.

DD. Substantial Completion Date shall mean the date the City certifies as such in accordance with Paragraph LIII, Substantial Completion.

EE. Substantial Completion shall mean the stage when the City determines (according to the Contract Documents) that the Work or a designated portion thereof is sufficiently complete, and when the Contractor has secured all required occupancy permits, if any, so the City can occupy or use the Work for its intended use.

FF. Work Commencement Date shall mean the date established as such in the Contract. The Contractor shall not postpone such date by failure to act or by permitting or allowing persons or entities under the Contractor's responsibility to postpone such date.

GG. Work shall include the construction and services the Contract Documents require, whether completed or partially completed, and all other labor, materials, equipment and services necessary to fulfill the Contractor's obligations. Work may constitute the whole or a part of the Project.

II. CONSTRUCTION AND INTENT

A. The General Conditions may refer to conditions that are not applicable to the Work. Such Conditions shall have no meaning.

B. 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.

C. Words and phrases that have well-known technical or construction industry meanings shall have such recognized meanings unless the context requires otherwise.

D. Words used in the singular shall include the plural, and the plural the singular.

E. Words used in the masculine gender shall include the feminine and the feminine the masculine.

F. These rules of construction shall not apply to any part of the Contract that expressly excludes such construction, or where the subject matter or context of such provision requires otherwise.

G. When the Contract Documents provide for a time determination by stating a certain number of days, the parties shall determine such time as follows:

1. Exclude the first day and include the last day.
2. Exclude Sunday if it would otherwise be the last day.
3. Exclude the following Holidays as observed by the City if such Holiday would otherwise be the last day: Labor Day, Veteran's Day, Thanksgiving Day, Christmas Day, New Year's Day, President's Day, Memorial Day or Independence Day.

H. Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an." Such omission in one statement as opposed to inclusion in another shall not affect the interpretation of either statement.

I. The parties shall interpret the General Conditions exclusively according to the terms of the Contract Documents. The parties do not intend any comparison to any other document.

III. OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

A. The Drawings, Specifications and other documents the Architect prepares for this Project are and shall remain the property of the City and the Architect. Both the City and the Architect retain all common law, statutory and other reserved rights, including any copyright.

B. Upon completion of the Work, the Contractor shall return or account for all copies of any Drawings, Specifications and other documents the Architect prepares (except the Contractor's record set) to the Architect.

C. The City and the Architect have provided the Drawings, Specifications and other documents the Architect prepares for this Project (and copies thereof furnished to the Contractor) solely for use in this Project. Any other use requires the specific written consent of the City and Architect. The Contractor, Subcontractor, Sub-subcontractor, and material or equipment suppliers, shall not use such documents on other projects, including additions to this Project outside the scope of the Work.

D. The City and Architect hereby grant to the Contractor, Subcontractors, Sub- subcontractors and material or equipment suppliers a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents the Architect prepares for this Project. Subcontractors, Sub-subcontractors and material or equipment suppliers shall take such license limited strictly to documents appropriate for use in their own work. Such license shall include authority to submit or distribute licensed documents to meet official regulatory requirements or for other official purposes for the Project.

PRECONDITIONS AND ASSURANCES

IV. GENERAL PRECONDITIONS AND ASSURANCES

A. By submitting a bid, the Contractor represents that the Contractor has:

1. Inspected and otherwise acquired site specific information of and concerning:
   a. The conditions under which the work is to be performed;
   b. the site of the work;
   c. the structure of the ground;
   d. any obstacles that may be encountered; and
   e. all other relevant matters concerning the work;
2. Compared and evaluated such personal observations with the requirements of the Contract Documents;
3. Determined such methods and practices necessary as to underground structures, underground utilities (both public and private), underground soil and rock formations, ground water, and other obstacles that may be encountered;
4. Made and prepared its Bid using only materials and equipment which comply fully with the plans and specifications, acknowledging that any failure to do so shall make the Contractor responsible for furnishing materials and equipment which fully conform without additional compensation;
5. Examined the complete specifications and plans, including all related documents, all of which may contain provisions applicable not only to the Contractor, but also to the Subcontractors;
6. Made such examinations and is satisfied as to the conditions to be encountered in performing the work and as to the requirements of the Contract;
7. Verified the correctness of any quantities listed in any Contract Documents; and
8. Received all the information the Contractor needs concerning the conditions of the Project Site.

B. The Contractor shall not present a claim for adjustment to the Contract Sum or Contract Time for any condition the Contractor knew or reasonably should have known from information available to the contractor under Subparagraph IV(A). The Contractor shall not present a claim for surface or subsurface conditions encountered.

C. The Contractor shall not present a claim for adjustment to the Contract Sum or Contract Time for any dispute related to: estimates of quantities in the Contract, or any misunderstanding of the nature or amount of work to be done.

D. The Contractor shall employ such methods and means in the carrying out the work as will not cause any interruption or interference with any other contractor or subcontractor.

E. Based upon the contract documents, the Contractor agrees and acknowledges that:

1. The Contract documents are adequate and sufficient to provide for completion of the Work. This acknowledgment extends to work that by inference or necessity may be required or useful for the completion of the work in accordance with all applicable laws, codes and professional

standards, even though such work may not be expressly provided for in the Contract Documents;

2. The contract sum is reasonable compensation for all the Work, including all unforeseen, foreseen and foreseeable risks, hazards and difficulties in connection with the Work;
3. The Contract Time is adequate for the performance of the Work; and
4. The Work shall not result in any lateral or vertical movement of any structure.

F. The Contractor shall sign all necessary Contract Documents and any related documents necessary to complete the Work.

V. UNIT PRICES.

When the Contract Documents provide for portions or quantities of Work on a unit price basis, such estimated quantities in the Contract are approximate and are to be used only as a basis for estimating the probable cost of the work and for comparing the proposals offered for the work. The Contractor agrees that, during progress of the work, the City may find it advisable to increase or decrease the quantities as the City may deem necessary or desirable. The actual amount of work to be done and material to be furnished on a Unit Price basis may differ from the estimated quantities. The City shall make payment for Unit Price Work based on the actual number of units installed on the completed work.

VI. STATED CONDITIONS.

Where the City indicates conditions in the Contract Documents, such conditions shall be considered only for information and as indicative of conditions as observed at the time and place indicated. The City shall not be held responsible for any variance in conditions encountered at the time of actual work.

CITY

VII. INFORMATION AND SERVICES REQUIRED OF THE CITY

A. The City shall not be responsible for furnishing surveys (unless required for the execution of the work and requested by the Contractor in writing) or for providing other information as to the physical characteristics, legal limitations, or utility locations for the project site. The City shall furnish or cause to be furnished to the Contractor a legal description of the project site. Such legal description shall not be a part of the Contract Documents. The City may provide existing test borings for the site. If the Contractor uses any such information, the Contractor is solely responsible for such use. The City does not assume any responsibility whatsoever as to the sufficiency or accuracy of such borings, or any logs or results from such borings including any related interpretations. Further, the City provides absolutely no warranty or guarantee, express or implied, that the conditions indicated by such borings, investigations, logs, or information are representative of those existing throughout the project site, or any part thereof, or that changes or unforeseen developments may not occur.

B. Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, (For example see: Paragraph XVIII.) the City 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.

C. The City shall furnish information or services under the City's control with reasonable promptness to avoid delay in orderly progress of the Work.

D. The above responsibilities supplement other duties and responsibilities of the City provided elsewhere, specifically including Construction by City or by Separate Contractors, Payments and Completion, and Insurance and Bonds.

VIII. CITY'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents (as required by correction of work provisions), or persistently fails to carry out Work in accordance with the Contract Documents, the City may order the Contractor to stop the Work, or any portion thereof, until the Contractor eliminates the cause for such order. The Mayor shall sign such stop order stating such cause in writing. The right of the City to stop the Work shall not give rise to a duty for the City to exercise this right for the Contractor or any other person or entity.

IX. CITY'S RIGHT TO CARRY OUT THE WORK

A. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, the City may (without prejudice to other remedies) correct such deficiencies. The City may do so only when the Contractor fails to commence corrections within a seven-day period after receipt of written notice from the City, or when the Contractor fails to continue correction of such deficiencies with diligence and promptness.

B. The City or the Architect shall issue an appropriate Change Order deducting the cost of correcting such deficiencies. Such Change Order shall include compensation for the Architect's additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due to the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the City.

X. STORAGE OF MATERIALS

A. The Contract shall store all materials under the general supervision and direction of the Architect.

B. The Contractor shall store all Materials to preserve their quality and fitness for the Work and to facilitate prompt inspection.

C. The Architect may, when needed, order the Contractor to store Materials under cover or on wooden platforms or as the Architect otherwise reasonably requires to protect the same from damage.

D. The Contractor shall not use any materials in the Work that may contain Asbestos as defined under the Nebraska Asbestos Control Act, Neb. Rev. Stat §§71-6301 et. seq. without the express written approval of the City.

XI. ALTERATIONS AND SUBSTITUTIONS.

A. The City or the Architect shall have the right to alter and modify the plans and specifications, thus making specific changes in the Work. If such changes diminish the amount of Work, the Contractor shall not file any claim for anticipated profit from such loss of Work. If such changes increase the amount of work, such increase shall be made by Modification to the Contract.

B. Whenever the drawings or specifications identify a material, article, or piece of equipment by brand name or catalog number, such identification shall define performance, quality level, or other salient requirements. The Architect may consider other products of equal performance, capacity, quality and function upon the Contractor's written substitution request. Otherwise, the Contractor shall use the identified goods, unless the Architect approves such request for substitution in writing. Upon any substitution of lesser priced goods, the Architect shall prepare a Modification deducting any resulting price differential from the Contract Sum. Otherwise, the Contractor shall make any incidental changes or extra component parts required to accommodate the substitute without a change in the Contract Sum or Contract Time. The Contractor warrants that approved substitutes will not effect major changes in the function or general design.

XII. DEFECTIVE MATERIALS.

A. The City shall consider all materials not conforming to the specifications as defective. Unless remedied, the City shall reject all defective material, whether in place or not. The Contractor shall remove any such defective material from the work site at the Contractor's own cost.

B. The Architect may approve materials the Contractor has remedied by reconditioning or correction to satisfactorily meet the Specifications. The Architect may make such approval in writing upon the written request of the Contractor. The Contractor shall not use any remedied materials without such written approval.

XIII. CITY SUPPLIED MATERIALS.

A. The City shall furnish City supplied Material or equipment according to the Contract Documents in good condition and ready for installation. The Contractor shall pick up such material or equipment at a location the City or the Architect shall designate.

B. The Contractor shall inspect and measure all City supplied material or equipment before the same is loaded onto the Contractor's vehicle for transportation to the work site. The Contractor shall complete and sign a Certificate of Acceptance for such materials and immediately submit the same to the Architect or his authorized representative. The Contractor shall note all defects in materials and measure on such Certificate.

C. The Contractor shall return any excess city supplied materials to the point of receipt. The City shall thereupon issue the Contractor a written receipt verifying condition and measures such excess material. The City may refuse any materials damaged by the Contractor. The Contractor shall pay for the cost of any such damaged materials.

CONTRACTOR

XIV. REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

A. The Contractor hereby specifically acknowledges and declares that the Contract Documents are complete and sufficient to have enabled the Contractor to determine the cost of the work. The Contractor hereby specifically acknowledges and declares that

the Drawings, Specifications and all addenda are sufficient to enable the Contractor to construct the Work in accordance with applicable laws, statutes, building codes and regulations, and otherwise to fulfill all its obligations to complete the Work. In addition, if the Contractor performs any construction activity with knowledge that it involves a recognized error, inconsistency or omission in the Contract Documents, the Contractor shall assume full responsibility for such performance and shall bear the attributable costs for correction. See Subparagraph XVIII(C) for discrepancies related to Building Codes and regulations.

B. The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. The Contractor shall immediately report any errors, inconsistencies or omissions discovered to the Architect in writing.

C. The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph XXIV.

D. The Architect or City may furnish the Contractor additional instructions and detailed drawings as necessary to carry out the Work. Such additional drawings are a part of the Contract Documents

XV. SUPERVISION AND CONSTRUCTION PROCEDURES

A. The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and shall have control over construction means, methods, techniques, sequences, coordination, and procedures for all portions of the Work.

B. The Contractor shall be responsible to the City for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with Contractor.

C. 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 Architect in the Architect's administration of the Contract, or by tests, inspections or approvals persons other than the Contractor perform.

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

E. At the earliest possible time after the commencement of the Work on the Project Site, the Contractor shall:

1. Contract (at Contractor's expense) a state licensed land surveyor to verify and establish all property corners and benchmarks;
2. Locate the Project on the Project Site;
3. Establish any necessary reference marks and axes from which the Work accurately can progress;
4. Furnish the Architect evidence of the verification required above; and
5. Provide written Notice to the City of any errors discovered from such verification.

F. If the Work requires any public authority to inspect or approve the same, the Contractor shall cause the timely performance of any such inspection or approval. No such inspection performed or failed to be performed shall waive the Contractor's obligations under the Contract Documents. No such inspection or approval (even if the City is the inspecting or approving authority) shall act as an approval or acceptance of the Work or portions thereof by the City.

G. The Contractor acknowledges that it is the Contractor's responsibility to hire all personnel for the proper and diligent prosecution of the Work. The Contractor shall use its best efforts to maintain labor peace for the duration of the Work. In the event of a labor dispute, the Contractor shall not be entitled to any increase in the Contract Sum.

XVI. LABOR AND MATERIALS

A. 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 any other item or services necessary for proper execution and completion of the Work. Such items and services shall be so provided regardless of whether temporary or permanent or whether incorporated or to be incorporated in the Work.

B. 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 employ or permit employment of unfit persons or persons not skilled in tasks assigned to them.

XVII. WARRANTY

A. The Contractor warrants to the City that:

1. Materials and equipment furnished under the Contract shall be of good quality and new unless otherwise required or permitted by the Contract Documents;
2. The Work shall be free from defects not inherent in the quality required or permitted;
3. The Work shall be performed in accordance with accepted and established practices and procedures recognized in the construction trade in general and the Architect or design professionals in general; and
4. The Work shall conform with the requirements of the Contract Documents.

B. The City may consider Work not conforming to these warranty requirements as defective Work.

C. The Contractor's warranty excludes: Remedy for damage caused by abuse by the City; Modifications not executed by the Contractor; improper or insufficient maintenance by the City; improper operation by the City; or normal wear and tear under normal usage.

XVIII. PERMITS, FEES AND NOTICES

A. Unless specifically exempted in the Contract Documents, the Contractor shall secure and pay for the building permit and other legally required permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract. The Contractor shall procure all Certificates of inspection, use, occupancy, permits and licenses, pay all charges and fees and give all notices necessary and incidental to the due and lawful prosecution of the Work. Certificates of inspection, use, or occupancy shall be delivered to the City upon completion of the Work. Such delivery shall be made in a timely manner to allow the City to occupy the Project in accordance with the approved Work schedule. The Contractor shall not request or claim any adjustment to the Contract Sum for the costs of procuring any such inspections or approvals.

B. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on performance of the Work and shall likewise require all subcontractors and all their employees to do the same.

C. The Contractor shall review the Contract Documents to determine any discrepancy between building codes and regulations the Contractor has knowledge of or should reasonably be able to determine. The Contractor shall immediately notify the City and the Architect in writing of any such discrepancies. The Contractor shall not violate any zoning, setback or other location requirements, laws or codes and ordinances, or of any recorded covenants the Contractor has knowledge. If the Contractor observes that portions of the Contract documents are at variance with applicable laws, statutes, ordinances, building codes, rules or regulations, the Contractor shall promptly notify the City and the Architect in writing, and any resulting changes necessary shall be accomplished by appropriate Modification. See Subparagraph XIV(A) for discrepancies related to error, inconsistency or omission in the Contract Documents.

D. 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 Architect and City, the Contractor shall assume full responsibility for such Work. In addition, the Contractor shall bear the attributable costs of correction.

XIX. PRE-CONSTRUCTION AND PROGRESS CONFERENCES.

A. Within forty-eight (48) hours of receipt of notification from the Architect, the Contractor or his authorized representative shall, at no cost to the City, appear at a location designated by the Architect for the purpose of discussing pre-construction or construction scheduling, traffic control procedure or methods, and project progress during construction.

B. At such conferences the Contractor or his authorized representative shall provide, at no cost to the City, any data sheets, construction schedules, or other information the Architect may reasonably request.

XX. ALLOWANCES

A. The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Contractor shall supply items covered by allowances in such amounts and by such persons or entities as the City may direct. The Contractor may make reasonable objection to employing such persons or entities. Upon such reasonable objection the City shall appoint or direct alternate persons or entities as needed.

B. Unless otherwise provided in the Contract Documents:

1. The City shall select Materials and equipment under any allowance to avoid delay in the Work;

2. To determine Allowances, the Contractor shall include the Contractor's cost for materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
3. The Contract Sum (not the related allowances) shall include the Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses related to such allowances.
4. Whenever the costs in Clause XX(B)(2); above are more than or less than allowances, the City and Contractor shall adjust the Contract Sum accordingly by Change Order.

XI. SUPERINTENDENT

The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the Work. The superintendent shall represent the Contractor. Any Communication to the superintendent or that the superintendent receives shall bind the Contractor. The City or Architect shall confirm important communications to the Contractor in writing. The City or Architect shall similarly confirm any specific communication upon the written request of the Contractor.

XXII. CONTRACTOR'S CONSTRUCTION SCHEDULES

A. The Contractor, promptly after being awarded the Contract, shall prepare and submit for the City's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents. The Contractor shall revise the same at appropriate intervals as required by the conditions of the work and Project. The Contractor shall relate such schedules to the entire Project for the expeditious and practicable execution of the Work.

B. The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals. The Contractor shall coordinate such schedule with the Contractor's construction schedule. The Contractor shall submit the same to the Architect allowing the Architect reasonable time to review the submittals.

C. The Contractor shall conform to the most recent schedules.

XXIII. DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the City one record copy of the Drawings; Specifications; Addenda; Change Orders; Modifications; approved Shop Drawings; Product Data, Samples and similar required submittals in good order and marked currently to record changes and selections made during construction. During the Work, The Contractor shall permit the City and Architect access to such record copy. The Contractor shall deliver the same to the City upon completion of the Work.

XXIV. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

A. Contract Documents shall not include Shop Drawings, Product Data, Samples and similar submittals. Such submittals demonstrate or illustrate the Contractor's proposal to conform to the information given and the design concept expressed in the Contract Documents for related portions of the Work.

B. The Contractor shall review, approve, and submit to the Architect any Shop Drawings, Product Data, Samples, and similar submittals the Contract Documents require. The Contractor shall do so with reasonable promptness to prevent any delay in the Work or in the activities of the City or of separate contractors. The Architect may return (without any further action) any Submittals that the Contract Documents do not require.

C. The Contractor shall obtain the Architects approval before beginning any portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals. The Contractor shall perform such Work only in accordance with approved submittals.

D. By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, and has checked and coordinated the information contained within such submittals with the requirements of the work and the Contract Documents.

E. The Architect's approval of such submittals shall not excuse the Contractor for deviations from any requirements of the Contract Documents. The obtain specific written approval for such deviations only when the Contractor has given written notice to the Architect with the original submittal and the Architect and the City have given written approval to the specific deviation. The Architect's approval of such submittals shall not relieve the Contractor from responsibility for any errors or omissions therein.

F. The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than revisions the Architect requested on previous submittals.

G. The Contractor may identify Informational submittals in the Contract Documents that the Architect is not expected to respond to or approve.

H. When the Contract Documents require professional certification of performance criteria of materials, systems or equipment, the City and the Architect shall be entitled to reasonably rely upon the accuracy and completeness of such calculations and certifications.

XXV. USE OF SITE

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

B. The Contractor shall protect the site and the Work from loss by theft or otherwise. Until completion and final acceptance of the work, the Contractor shall assume all risks for repair and replacement for damage to the site and the Work, whether caused by lightning, fire, wind, water, theft, vandalism or other causes.

XXVI. CONTRACTOR'S USE OF UTILITIES.

A. The Contractor shall arrange for all temporary service connections for various utilities and shall pay the various utilities for such temporary services.

B. Prior to the use of any City water from a fire hydrant, the Contractor shall take out the necessary permit for a hydrant meter and valve from the Lincoln Water System.

C. The Contractor shall pay the permit fees that are established by the Lincoln Water System for the installation or moving of hydrant meters and valves.

D. The Contractor shall not operate the hydrant, but may use the exterior valve to control the flow of water. The Contractor shall be liable for any damage to the meter and valve.

XXVII. CUTTING AND PATCHING

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

B. The Contractor shall not damage or endanger any portion of the Work or fully or partially completed construction of the City 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 City or a separate contractor except with written consent of the City and of such separate contractor. Such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the City or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

XXVIII. CLEANING UP

A. 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, all waste materials, rubbish, tools, construction equipment, machinery and surplus materials.

B. If the Contractor fails to clean up as provided in the Contract Documents, the City may do so and charge the cost thereof to the Contractor.

XXIX. ACCESS TO WORK

The Contractor shall provide the City and Architect access to the Work in preparation and progress wherever located.

XXX. ROYALTIES AND PATENTS

A. It is mutually understood and agreed that, without exception, the Contract Sum includes all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the Work.

B. Whenever the Contractor uses or the Contract Documents require any design device, material, or process covered by letters, patent, or copyright, the Contractor shall provide for the right for such use by legal agreement with the patentee or owner thereof. Regardless of any agreement or lack thereof, the Contractor and the surety in all cases shall indemnify and hold harmless the City from any and all claims for infringement by the use of any such patented design, device, material, process, trademark or copyright, in connection with the Work. Likewise, the Contractor and the surety in all such cases shall indemnify the City for any costs, expenses, and damages that the City may be obligated to pay, for any such claims. The indemnification provided herein shall apply at any time during the Work and shall continue after the completion of the work indefinitely.

C. The Contractor shall pay all royalties and license fees.

D. The Contractor shall defend suits or Claims for infringement of patent rights.

E. The Contractor shall promptly notify the Architect of any required design, process, or product the Contractor has reason to believe is an infringement of a patent, copyright or other intangible right. The Contractor shall assume full responsibility for and shall bear the attributable costs for any possible patent, copyright or other alleged infringement of intangible rights.

XXXI. INDEMNIFICATION

A. To the fullest extent permitted by law, the Contractor shall indemnify and Hold Harmless the City, Architect, 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, that results in any Claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by Contractor or anyone directly or indirectly employed by Contractor, or anyone for whose acts any of them 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 that would otherwise exist as to a party or person described in this Paragraph XXXI. This section shall not require Contractor to indemnify or Hold Harmless the City for any losses, Claims, damages, and expenses arising out of or resulting from the sole negligence of the City.

B. In addition, the City shall not be responsible nor be held liable, for any damage consequent upon the use, misuse or failure of any equipment used by Contractor or anyone directly or indirectly employed by Contractor. The Contractor's acceptance or use of any such equipment shall mean that Contractor accepts full responsibility for any loss or damage to the equipment while the equipment was used or under the control of Contractor, or anyone directly or indirectly employed by Contractor. In addition to paying for any such damage to the equipment itself, the Contractor agrees to exonerate, indemnify, and hold harmless the City from and against any and all Claims for any damage whatsoever resulting from the use, misuse or failure of such equipment. Such indemnification applies regardless of whether such damage or loss is occasioned by any employee or property of Contractor, the City or other persons. Such indemnification shall not be qualified or reduced in any way because the subject equipment may be furnished, rented or loaned to Contractor by the City.

C. In Claims by any person or entity indemnified under this Paragraph XXXI or 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 this Paragraph XXXI 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' or worker's compensation acts, disability benefit acts or other employee benefit acts.

XXXII. PROTECTION OF WORK AND PROPERTY

A. The Contractor shall protect and support all water, sewer, gas and other pipes and structures; telephones, telegraph or electric power lines; all railroad tracks, pavement, building walls, fences, utilities, or other properties, public or private, which may be damaged during the execution of this Work. During all operations under the Contract, the Contractor shall carefully protect all trees, shrubbery, sod, plantings, etc., not designated to be removed as part of the work of the Contract.

B. In the event of damage or injury to such property or improvements, the Contractor shall promptly repair the same to the satisfaction of the City. The Contractor shall pay the attributable costs for any such repairs. *See Also*: Contractor's obligations and assumption of risk in Subparagraph XXV.

C. The City may provide information for existing sub-surface structures in the vicinity of the work in the Contract Documents. The City does not, however, guarantee the completeness or accuracy of this information. Any delay or extra cost to the Contractor due to encountering structures differing from those provided shall not constitute a Claim for extra payment.

XXXIII. TRAFFIC CONTROL

A. Where required for any activities related to the Work, all Traffic Control Devices and Signs shall conform to the City's traffic control regulations and requirements.

B. All costs associated with traffic control shall be paid for by the Contractor as a part of the Contract Sum.

XXXIV. FAIR EMPLOYMENT PRACTICES

The Contractor and the Subcontractors shall not discriminate against any employee (or applicant for employment) with

respect to compensation, terms, advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to the requirements of Lincoln Municipal code Chapter 11.08 and Section 48-1122, Nebraska Reissue Revised Statutes of 1943.

XXXV. FAIR LABOR STANDARDS

The Contractor and the Subcontractors shall maintain Fair Labor Standards in the performance of the Contract, as required by Chapter 73, Nebraska Reissue Revised Statutes of 1943.

ARCHITECT

XXXVI. ARCHITECT'S ADMINISTRATION OF THE CONTRACT

A. The Architect shall provide administration of the Contract as described in the Contract Documents, and may act as the City's representative, with the City's concurrence, (1) during construction, (2) until final payment is due and (3) from time to time during the correction period described in Paragraph LXIV. The Architect shall have authority to act on behalf of the City only to the extent provided in the Contract Documents and allowed by law.

B. The City and the Architect shall at all times have the right of access to the site. The City requires the Architect to visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine if the Work is being performed in a manner that, when completed, will be in accordance with the Contract Documents. On the basis of on-site observations, the City requires the Architect to keep the City informed of progress of the Work, and guard the City against defects and deficiencies in the Work. The Contractor shall cooperate and accommodate the Architect pursuant to the site visitation and reporting requirements above. The Architect's responsibilities shall not lessen or excuse any obligations or duties of the Contractor.

C. The City and Contractor shall attempt to communicate to each other through the Architect. The City and Contractor shall communicate with the Architect's consultants through the Architect. The City shall communicate with Subcontractors and material suppliers through the Contractor. The Contractor shall communicate with separate contractors through the City.

D. The Contractor shall permit the Architect to review and certify any amounts Claimed due upon observation and evaluation of the Contractor's Applications for Payment. The Architect shall issue certificates for Payment to the City based on such review.

E. The Architect may reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect may require additional inspection or testing of the Work in accordance with Subparagraphs LXII(A-B), whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect 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 Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work other than the City.

F. The Architect shall review and approve or take other appropriate action upon the contractor's submittals such as Shop Drawings, Product Data and Samples. The Architect shall review the same for conformance with information given and the design concept expressed in the Contract Documents. The Architect's review shall not excuse the Contractor from determining the accuracy and completeness of details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs XIV, XVII, and XXIV. The Architect's review shall not constitute approval of safety precautions or any construction means, methods, techniques, sequences or procedures (unless otherwise specifically stated by the Architect.) The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

G. The Contractor shall permit the Architect to conduct inspections to determine the date or dates of Substantial Completion and the date of final completion.

H. If the City and Architect agree, the Architect may provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

CLAIMS & DISPUTES

XXXVII. CLAIMS AND DISPUTES

A. The Contractor and City shall make any Claim against the other party in writing giving a description thereof to the Architect and the other party. The claimant may make a Claim only 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.

B. Pending final resolution of a Claim (unless the Parties otherwise agree in writing) the Contractor shall proceed diligently with performance of the Contract and the City shall continue to make payments in accordance with the Contract Documents.

C. When the City makes final payment and the Contractor accepts the same, the City and the Contractor thereby waive all claims except those arising from:

1. Unsettled liens, Claims, security interests or encumbrances arising out of the Contract;
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.

D. If the either party encounters or discovers (1) subsurface or otherwise concealed physical conditions which differ materially from 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 inherently encountered in the Work, then the observing party shall give prompt notice of the condition to the Architect and the other party by giving a description thereof. The observing party shall give such notice promptly before conditions are disturbed and in no event later than 21 days after first observance of the same.

E. If the Contractor wishes to make Claim for an increase in the Contract Sum, the Contractor shall provide written notice as provided herein before proceeding to execute the Work. notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph LVIII, Emergencies. The Contractor may make claims for additional cost for reasons including but not limited to (1) a written opinion from the Architect, (2) an order by the City 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 Architect, (4) failure of payment by the City, (5) termination of the Contract by the City, (6) City's suspension or (7) other reasonable grounds.

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

G. If the Contractor bases a Claim for additional time on adverse weather, the Contractor shall substantiate such Claim with data substantiating that: (1) the adverse weather was abnormal for the period of time, (2) the Contractor could not have reasonably anticipated the adverse weather, and (3) the weather had an adverse effect on the scheduled construction.

H. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, the claimant shall give written notice of such injury or damage (whether or not insured) to the other party within 21 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If the claimant asserts additional cost or time related to such injury or damage, the claimant shall file a separate claim for each.

XXXVIII. RESOLUTION OF CLAIMS AND DISPUTES

A. The Architect shall review Claims and take one or more of the following preliminary actions within ten days after receipt of a Claim: (1) request additional supporting data from the Claimant, (2) submit a schedule to the parties indicating when the Architect expects to take action, (3) reject the Claim in whole or in part, stating reasons for rejection, (4) recommend approval of the Claim by the other party or (5) suggest a compromise. The Architect may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.

B. If the City and Contractor resolve the Claim, the Architect shall prepare a Change Order or other documentation accordingly.

C. If the City and Contractor do not resolve the Claim after consideration of the foregoing, either party may seek a judicial resolution of any Claim. Any Claim against the City shall comply with the provisions of Neb. Rev. Stat. 15-840 et seq. and other applicable laws relating to claims against the City.

SUBCONTRACTORS

XXXIX. AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

A. The Contractor shall notify the Architect of the names and addresses of the Subcontractors (including those who are to furnish materials or equipment fabricated to a special design) the Contractor proposes to use on the contract. The Contractor shall submit such notification before beginning any subcontracted work.

B. Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the City. The Contractor agrees to be fully responsible to the City for the acts or omissions of Subcontractors and of anyone employed directly or indirectly by the Contractor or Subcontractors. This contract obligation shall be in addition to the liability imposed by law upon the Contractor.

C. The Contractor agrees to bind every Subcontractor (and every Subcontractor of a Subcontractor) by the terms of the General Conditions and the Special Provisions of the contract, plans, and specifications as far as applicable, including insurance requirements, unless specifically noted to the contrary in a subcontract the City has approved in writing.

D. The Contractor shall not contract with a proposed Subcontractor to whom the City or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

E. If the City or Architect has reasonable objection to a Subcontractor proposed by the contractor, the Contractor shall propose another to whom the City or Architect has no reasonable objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued. However, no increase in the Contract Sum shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

F. The Contractor shall not change a Subcontractor previously selected if the City or Architect makes reasonable objection to such change.

G. Failure of the City or Architect to reply within ten days after a subcontractor's submittal for approval shall mean the City has no reasonable objection.

H. By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities that the Contractor, by these Documents, assumes toward the City or Architect. Each subcontract agreement shall preserve and protect the rights of the City and Architect under the Contract Documents for each Subcontractor's Work so that subcontracting thereof shall not prejudice such rights. Such agreements 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 City. 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 shall be bound. Upon written request of the Subcontractor, the Contractor shall identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

I. Notwithstanding any provision of Subparagraph XXXIX(A), the Contractor shall require a written Subcontract between the Contractor and such Subcontractor (or the Subcontractor and its Sub-subcontractor at any tier) for any part of the Work a Subcontractor or Sub-subcontractor performs. The Contractor shall use or require the use of a form of subcontract satisfactory to the City in all respects for such written agreements. Each such contract shall contain provisions that require the Subcontractor to:

1. Perform such Work in accordance with the Contract Documents;
2. Waive all rights the contracting parties may have against one another or that the Subcontractor may have against the City for damages caused by fire or other perils covered by insurance required in contract documents.
3. Carry and maintain insurance coverage in accordance with the Contract Documents, and to file Certificates of such coverage with the Contractor;
4. Submit to Contractor or Subcontractor, as the case may be, applications for payment (on a City approved form) together with clearly defined invoices and billings supporting all such applications under each subcontract;
5. Report, so far as is practicable, unit prices and any other feasible formula for use in determination of the costs of changes in the Work;
6. Furnish to the Contractor in a timely fashion all information necessary for the preparation and submission of the reports required in the Contract Documents;

7. Continue to perform under its subcontract in the event the Contract is terminated and the City shall take assignment of said contract and request such subcontractor to continue such performance;
8. Remove all debris created by its activities; and
9. Follow Fair Employment Practices and Fair Labor Standards.

XL. CONTINGENT ASSIGNMENT OF SUBCONTRACTS

A. The Contractor shall automatically assign to the City each subcontract agreement the City accepts by notifying the Subcontractor in writing upon the City's termination of the Contract for cause pursuant to Paragraph LXXIII. Such assignment shall be subject to the prior rights of the surety, if any.

B. If the Work has been suspended for more than 30 days, the City may equitably adjust compensation for any Subcontractor assigned hereunder.

CHANGES IN THE WORK

XLI. CHANGES

A. The City or Contractor may accomplish Changes in the Work after execution of the Contract (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 Changes In The Work (XLI - XLII) and elsewhere in the Contract Documents.)

B. The parties shall perform Changes in the Work as provided in the Contract Documents, and the Contractor shall proceed promptly so as to avoid any delay in the Work, unless otherwise provided in such change in the Work.

XLII. CONSTRUCTION CHANGE DIRECTIVES

A. The City may use A Construction Change Directive in the absence of total agreement on the terms of a Change Order.

B. If the Construction Change Directive provides for an adjustment to the Contract Sum, the City shall calculate such adjustment based on one of the following methods:

1. lump sum properly itemized and supported by sufficient substantiating data to permit City evaluation;
2. unit prices stated in the Contract Documents or subsequently agreed upon;
3. cost (to be determined in a manner the parties agree upon) plus a mutually acceptable fixed or percentage fee; or
4. as provided in Subparagraph XLII(E).

C. Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect 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.

D. If the Contractor signs such Construction Change Directive, such signature shall conclusively establish the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining the same. The City shall consider such agreement as immediately effective and shall record such agreement as a Change Order.

E. If the Contractor does not respond within 10 days or disagrees with the method for adjustment in the Contract Sum, the City shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change. In case of an adjustment that increases the Contract Sum, the expenditures attributable to the change shall include a reasonable allowance for overhead and profit. In such case, and under Clause XLII(B)(3), the Contractor shall keep and present (in such form as the City may prescribe) an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, the City shall pay costs limited only to the following costs directly attributable to the change:
1. Labor, including social security, old age and unemployment Insurance, fringe benefits required by agreement or custom, and workers' or workmen's compensation Insurance;
2. Materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
3. Rents for machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
4. Premiums for all Bonds and Insurance, permit fees, and sales, use or similar taxes related to the Work; and
5. Additional supervision and field office personnel.

F. Pending final determination of costs, the Contractor may include amounts not in dispute in Applications for Payment. For a deletion or change that results in a net decrease in the Contract Sum, the City and Contractor shall use the actual net cost to determine such decrease. When both additions and credits covering related Work or substitutions are involved in a change, the City and Contractor shall figure an allowance for overhead and profit on the basis of net increase, if any, with respect to that change.

G. When the City and Contractor agree with the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately. Such agreement shall be recorded by preparation and execution of an appropriate Change Order.

TIME

XLIII. PROGRESS AND COMPLETION

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

B. The Contractor shall not knowingly commence operations on the site or elsewhere prior to the effective date of Insurance required by Paragraphs LIX, LX, LXI, Insurance and Bonds. The effective date of such Insurance shall not change The Work Commencement Date in any event. The Contractor shall notify the City in writing not less than five days before commencing the Work unless the City establishes a different date of commencement by a notice to proceed.

C. The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

XLIV. DELAYS AND EXTENSIONS OF TIME

A. If the Contractor is delayed by an act or neglect of the City or Architect, or of an employee of either, or of a separate contractor employed by the City, or by delay the City has authorized in writing, or by other causes that the City determines may justify delay, then the City and Contractor shall extend the Contract Time accordingly by Change Order.

B. The Contractor shall make such claims in accordance with applicable provisions of Paragraph XXXVII.

XLV. LIQUIDATED DAMAGES

A. If the Contractor fails to complete the Work prior to the completion date (allowing for any approved extensions of time), the Contractor shall pay Liquidated Damages for each day that the work remains incomplete. The City shall deduct the amount of Liquidated Damages due from the money due the Contractor prior to final payment. If the remaining amount due the Contractor is less than the total amount of Liquidated Damages, the Contractor shall pay the difference within 10 days. If the Contractor fails to pay such difference, the City shall have the right to recover the difference from the Contractor or his Surety.

B. Unless specifically amended or modified by special provision, the daily amount of the Liquidated Damages shall be as follows:

1. Contract Sum up to and including $100,000:
   $100/day
2. Contract Sum more than $100,000 up to and including $500,000:
   $200/day
3. Contract Sum more than $500,000 up to and including $1,000,000
   $300/day.
4. Contract Sum more than $1,000,000
   $400 /day.

C. The Liquidated Damages provided herein are not considered punitive. The Contractor agrees that such damages are predetermined and reasonable amounts to compensate for the detriment to the public and to defray expenses incurred by the City due to the delay in the completion of the project.

PAYMENTS AND COMPLETION

XLVI. CONTRACT SUM

A. The Contract Sum stated in the Contract (including any adjustments the City authorizes) is the total amount the City shall pay to the Contractor for the Work.

B. Notwithstanding any other provision of the Contract Documents, the City may withhold any payment to the Contractor hereunder if and for so long as the Contractor fails to perform any of its obligations hereunder or if the Contractor is in default under any terms and conditions of the Contract Documents. Such withholding shall be limited to an amount, sufficient in the reasonable opinion of the City, to cure any such default or failure.

XLVII. SCHEDULE OF VALUES

Before the first Application for Payment, the Contractor shall submit to the Architect and the City 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 Architect may require. Upon agreement, the City and Architect shall use such schedule as a basis for reviewing the Contractor's Applications for Payment.

XLVIII. APPLICATIONS FOR PAYMENT

A. At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect and the City an itemized Application for Payment for completed operations. Such application shall be notarized and supported by such data substantiating the Contractor's right to payment as the City or Architect may require(such as copies of requisitions from Subcontractors and material suppliers) Such application shall also state the amount of any required retainer related to the application. The Contractor shall certify such application for Payment as true and correct. In addition, such Application for Payment shall contain the Contractor's certification that the Contractor has paid all due and payable bills for the Work to date or that the Contractor shall pay the same from the proceeds of such application.

B. Such applications may include requests for payment for changes properly authorized by Construction Change Directives but not yet included in Change Orders.

C. Such applications shall not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

D. Unless otherwise provided in the Contract Documents, the City shall make payments 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 City, the City shall similarly make payment for materials and equipment suitably stored off the site at a location the parties have agreed upon in writing. The City conditions any such Payment for materials and equipment stored on or off the site upon the Contractor's compliance with measures and actions satisfactory to the City to establish the City's title to such materials and equipment or otherwise protect the City's interest. Such procedures, measures and actions shall include applicable Insurance, storage and transportation to the site for such materials and equipment stored off the site.

E. The Contractor warrants that title to all Work covered by an Application for Payment shall pass to the City 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 City shall 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.

XLIX. CERTIFICATES FOR PAYMENT

A. The Architect may issue a certificate for Payment to the City, with a copy to the Contractor, for such amount as the Architect determines is properly due. Otherwise, the Architect shall notify the Contractor and City in writing of the Architect's reasons for withholding certification in whole or in part as provided in Subparagraph L(A). The Architect shall take one or the other action within seven days after receipt of the Contractor's Application for Payment.

B. The issuance of a Certificate for Payment shall constitute the Architect's representation to the City (based on the Architect's observations at the site and the data comprising the Application for Payment) that the Work has progressed to the point indicated and that the quality of the Work complies with the Contract Documents. The foregoing representations are subject to: the Architect's evaluation of the Work for conformance with the Contract Documents upon Substantial Completion; results of subsequent tests and inspections; minor deviations correctable prior to completion; and specific qualifications expressed in writing by the Architect. The Architect's issuance of a certificate for Payment shall further constitute the Architect's representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Architect 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 City 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.

L. DECISIONS TO WITHHOLD CERTIFICATION

A. The Architect may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the City. The Architect may do so when (in the Architect's opinion) the Architect can not make the representations to the City required by Subparagraph XLIX(B). If the Architect is unable to certify payment in the amount of the Application, the Architect shall notify the Contractor and City as provided in Subparagraph XLIX(A). If the Contractor and Architect cannot agree on a

revised amount, the Architect shall promptly issue a Certificate for Payment for any amount the Architect is able to certify. The Architect may nullify any Certificate for Payment previously issued in whole or in part based on subsequently discovered evidence or subsequent observations. The Architect may also nullify or deny certification in whole or in part as may be necessary in the Architect's opinion to protect the City from loss because of:

1. Defective Work not remedied;
2. Third party Claims filed or reasonable evidence indicating probable filing of such Claims;
3. Failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
4. Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
5. Damage to the City or another party related to the Work;
6. Reasonable evidence that the Work shall 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.

B. When the Contractor causes removal of the above reasons for withholding certification, the Architect shall make such certification for amounts previously withheld.

C. Regardless of any dispute related to any Certificate of Payment, the Contractor shall expeditiously continue to prosecute the Work.

LI. PROGRESS PAYMENTS

A. After the Architect has issued a Certificate for Payment, the City shall make payment in the manner and within the time provided in the Contract Documents. The City shall notify the Architect of such payment.

B. The Contractor shall promptly upon receipt of payment from the City for certified work completed by Subcontractors pay the amount to which said Subcontractor is entitled for such certified portion of the Work, less any percentage portion of the Contractor's retainer applicable to the Subcontractor's work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.

C. The Architect shall, upon request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts the Contractor has applied for and the City's and Architect's actions thereon related to such subcontractor's work.

D. Neither the City nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor.

E. If practicable, the City may make Payment to material suppliers as provided for Progress Payments in Paragraphs LI(B-D).

F. A Certificate for Payment, a progress payment, or the City's partial or complete use or occupancy of the Project shall not constitute acceptance of Work.

LII. FAILURE OF PAYMENT.

The City shall have seven days from the date the City receives a Certificate of Payment to pay the Contractor. If the City does not pay the Contractor the certified amount within such time, the Contractor may notify the City and Architect in writing that the Contractor will stop the Work until the City makes the required payment. Such notice shall provide at least fourteen additional days after receipt for the City to make payment prior to the Contractor stopping the Work. Upon such Work stoppage, the City and Contractor shall extend the Contract Time accordingly and increase the Contract Sum by the Contractor's reasonable costs of shut-down, delay and start-up. The parties shall complete such changes as provided in Changes In The Work, Paragraphs XLI-XLII.

LIII. SUBSTANTIAL COMPLETION

A. When the Contractor considers that the Work (or a portion thereof that the City agrees to accept separately) is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. 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. Upon receipt of the Contractor's list, the Architect shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item that does not comply with the Contract Documents (including any items on the Contractor's list) the Contractor shall complete or correct such item upon the Architect's written notification. Once corrected or completed, the Contractor may submit a request to the Architect for another inspection to determine Substantial Completion.

B. When the Work or designated portion thereof is substantially complete, the Architect may prepare a Certificate of Substantial Completion. Upon the City's approval, such Certificate shall establish: (1) the date of Substantial Completion; (2)

responsibilities of the Contractor for security, maintenance, heat, utilities, damage to the Work and Insurance; and (3) the time for the Contractor to finish all items on the list accompanying the Certificate. Warranties provided in the Contract Documents shall commence on the date of Substantial Completion unless otherwise provided in the Certificate of Substantial Completion. The Contractor shall accept the Certificate of Substantial Completion and the responsibilities assigned in such certificate by signing the same. The Architect shall submit the Certificate to the Contractor for such acceptance.

C. The City shall make payment for the Work as certified in the Certificate of Substantial Completion upon the Contractor's written application and the Architect's Certificate for payment as provided in the Contract Documents.

D. The Contractor shall secure and deliver to the City any written warranties and guarantees from Subcontractors, Sub-Subcontractors and suppliers. Such warranties and guarantees shall state the period of warranty as required by the Contract Documents or otherwise as the City has agreed. The Contractor warrants all of the Work regardless of separate warranties by Subcontractors at any tier.

LIV. PARTIAL OCCUPANCY OR USE

A. The City may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor. Such partial occupancy or use may commence whether or not the portion is substantially complete. Prior to any partial occupancy or use, the City and Contractor shall by separate written agreement provide for the responsibilities assigned to each of them for at least the following: payments, retainer, security, maintenance, heat, utilities, damage to the Work and Insurance. Such written agreement shall also include terms concerning the period for correction of the Work and commencement of warranties. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Subparagraph LIII(A). The Contractor shall not unreasonably withhold consent to any such partial occupancy or use. The City and Contractor shall determine the stage of the progress of the Work by written agreement.

B. Immediately prior to such partial occupancy or use, the City, Contractor and Architect shall jointly inspect the subject area. The parties shall use such inspection to determine and record the condition of the Work.

C. Unless the City and the Contractor agree otherwise in writing, the City's partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of such Work.

LV. FINAL COMPLETION AND FINAL PAYMENT

A. 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 Architect shall promptly make such inspection. If the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect shall promptly issue a final Certificate for Payment stating that the Work has been completed in accordance with terms and conditions of the Contract Documents. Such final Certificate shall mean the entire balance found to be due the Contractor and noted in said final Certificate is due and payable.

B. The Architect's final Certificate for Payment shall constitute a further representation that the Contractor has fulfilled the conditions listed in Subparagraph LV(C).

C. Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the City or the City's property might be responsible or encumbered (less amounts withheld by City) 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 shall not be canceled or allowed to expire unless the insurer or Contractor provides at least 30 days' prior written notice to the City, (3) a written statement that the Contractor knows of no reason that the Insurance shall 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 City, 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 as may be designated by the City.

D. After Substantial Completion, if final completion of the Work is materially delayed through no fault of the Contractor or by Change Orders affecting final completion, the Contractor may apply in writing for the City to make payment of the balance due for that portion of the Work fully completed and accepted as certified by the Architect. Such application, certification and payment shall not terminate the contract. If the remaining balance for Work not fully completed or corrected is less than any retainer

stipulated in the Contract Documents, the Contractor shall submit the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted to the Architect 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. As to such portion, the making of final payment shall constitute a waiver of Claims by the City as provided in Subparagraph XXXVII(C).

E. When the Contractor, any Subcontractor or any material supplier accepts final payment, such acceptance shall constitute a waiver of Claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment. Such payee shall make such waiver in addition to the waiver described in Subparagraph XXXVII(C).

SAFETY

LVI. SAFETY PRECAUTIONS AND PROGRAMS

A. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.

B. The Contractor shall immediately notify the City and Architect in writing whenever the Contractor encounters material on the site that the Contractor reasonably believes to be asbestos or polychlorinated biphenyl (PCB).

LVII. SAFETY OF PERSONS AND PROPERTY

A. 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.

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

C. 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. The Contractor shall take all reasonable and proper precautions to protect persons, animals, and vehicles from injury. The Contractor shall leave fire hydrants and inlets free from encumbrance.

D. The Contractor shall exercise utmost care when conducting potentially dangerous activities related to the work, including: the use or storage of explosives or other hazardous materials; or the use or storage of potentially dangerous equipment. The Contractor shall conduct such activities only under the supervision of properly qualified personnel.

E. 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 LVII(A)(2) and LVII(A)(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 LVII(A)(2) and LVII(A)(3), except damage or loss attributable to acts or omissions of the City or Architect 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 XXXI, Indemnification.

F. 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 City and Architect.

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

H. The Contractor shall provide sanitary Latrines for the Contractor's work force and other persons related to the Work on the Work site. The, type, number and location for such latrine facilities shall be subject to approval by the City.

LVIII. EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act 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 XXXVII, Claims and Disputes and Paragraphs XLI--XLII, Changes In The Work.

FINANCIAL SECURITY

LIX. CONTRACTOR'S LIABILITY INSURANCE

A. The Contractor shall purchase such Insurance as shall protect the Contractor and the City from Claims set forth below which may arise out of or result from the Contractor's operations under the Contract. Such operations shall include operations by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Such claims shall include the following:

1. Claims under workers' compensation, disability benefit and other similar applicable employee benefit acts;
2. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
4. Claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (2) by another person;
5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
6. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and
7. Claims involving contractual liability Insurance applicable to the Contractor's obligations under Paragraph XXXI, Indemnification.

B. The Contractor shall procure the Insurance required by Subparagraph (A) of this paragraph in the minimum amounts (applicable law or a special condition of the Contract Documents may require greater coverage) as follows:

Worker's Comp

State	Statutory
Federal	Statutory

Auto Liability

Bodily Injury & Property Damage	$1,000,000 Combined Single Limit.

Commercial General Liability

Bodily Injury & Property Damage	$1,000,000 each occurrence
Aggregate	$2,000,000
Personal Injury	$1,000,000 each occurrence
Contractual Liability	$1,000,000 each occurrence
Products and Completed Operations	$1,000,000 each occurrence

C. All Liability Insurance Policies shall provide coverage: (1) on an "occurrence basis" only; (2) by endorsement to add the City of Lincoln, its officials, employees and volunteers as "Additional Insured;" and (3) without interruption from the Work Commencement Date until the date of final payment (as provided in the Contract Documents) or other coverage termination date for any coverage the Contractor is required to maintain after such final payment.

D The Contractor shall obtain all Insurance coverage with insurers authorized to do business in the State of Nebraska. The Contractor shall obtain all Insurance coverage with an insurer that has an A.M. Best's Rating of not less than A:VII, unless the City approves otherwise in writing.

E. The Contractor shall not commence work under this Contract until the Contractor has obtained all Insurance required by the Contract Documents and the City Attorney has approved such Insurance for compliance with the Contract Documents. The Contractor shall not allow any Subcontractor to commence work on any subcontract until the Subcontractor has likewise obtained all similar Insurance required of the Subcontractor.

F. The Contractor shall file all Certificates of Insurance with the Risk Management Office of the City of Lincoln on the standard ACORD CERTIFICATE OF INSURANCE form showing the specific limits of Insurance coverage required and any deductibles required. Such Certificate shall specifically state the Insurance policies are endorsed to require the insurer to provide the City of Lincoln 30 days' notice of cancellation, failure to renew or any material reduction of Insurance coverage. If any of the foregoing Insurance coverage is required to remain in force after final payment and is reasonably available, the Contractor shall submit an additional Certificate evidencing continuation of such coverage with the final Application for Payment as required by Subparagraph LV(C). The Contractor shall immediately notify the City of any material reduction or other changes related to any required coverage.

LX. PROPERTY INSURANCE

A. Where buildings or structures are to be constructed under this Contract, the Contractor shall provide and maintain "all risk" property Insurance provided on a "completed value" basis, covering such building or structure to 100% of the insurable value thereof. Such Insurance shall contain a "waiver of occupancy" endorsement. The insurer shall pay losses, if any, to the City of Lincoln and Contractor as their interest may appear. The Contractor shall file a Certificate of Insurance evidencing such Insurance coverage with the Risk Management Office of the City of Lincoln as soon as any such building or structure becomes insurable until title for such building or structure passes to the City. Such Certificate shall show that the City Attorney has approved such Insurance as represented on the Certificate for compliance with the Contract Documents. *See Also*: Contractor's obligations and assumption of risk in Subparagraph XXV.

B. Waivers of Subrogation**.** The City and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by property Insurance obtained pursuant to this Paragraph LX or other property Insurance applicable to the Work, except such rights as they have to proceeds of such Insurance held by the City as fiduciary. The City or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors, if any, and the subcontractor, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of Subrogation by endorsement or otherwise. A waiver of Subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the Insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

LXI. PERFORMANCE BOND AND PAYMENT BOND

A. Within ten days after the acceptance of the bid, the Contractor shall furnish, on forms provided by the City, construction performance and construction payment Bonds, in a sum not less than the Contract Sum, executed by the Contractor and by a corporate surety company authorized to transact business in the State of Nebraska. Such Bonds shall be conditioned upon the faithful performance of all the terms and conditions of the Contract Documents, including the holding harmless of the City from failure to do so, and including the making good of any and all guarantees that the Contract Documents may require and the construction payment Bonds shall be further conditioned upon the payment of all laborers and material suppliers used in the performance of the Contract, including Insurance premiums and interest.

TESTING AND CORRECTING WORK

LXII. TESTS AND INSPECTIONS

A. The Contractor shall conduct or arrange for any tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction at appropriate times. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the City, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The City shall bear costs of tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded.

B. If the Architect, City or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph LXII(A), the City shall instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the City. The City shall bear such costs except as provided in Subparagraph LXII(C).

C. If such procedures for testing, inspection or approval under Subparagraphs LXII(A-B) reveal failure of the portions of the Work

to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses.

D The Contractor shall secure all required Certificates of testing, inspection or approval unless the Contract Documents require otherwise. The Contractor shall promptly deliver such Certificates to the Architect.

E. The Contractor shall furnish, at no expense to the City, such samples of materials as may be required by the Architect or the City for testing. The Contractor shall bear any expense for retesting, required to establish the quality or acceptability of the materials in question.

F. The Contractor shall not install material of any kind in the project until the Architect has inspected and approved such materials.

G. The City reserves the right to retest all materials, prior to incorporation into the work, at the City's expense. The City may then reject all materials that, when retested, do not comply with the Contract Documents.

H. The Contractor shall conduct or arrange for tests or inspections conducted pursuant to the Contract Documents promptly to avoid unreasonable delay in the Work.

LXIII. UNCOVERING OF WORK

A. If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, the Contractor shall uncover the same for the Architect's observation upon the written request of the Architect. The Contractor shall replace or restore such uncovered Work at the Contractor's expense without any adjustment to the Contract Time.

B. If a portion of the Work has been covered that the Architect has not specifically requested to observe prior to its being covered, the Architect may request to see such Work. Such request shall be in writing and approved by the City. Upon such request, the Contractor shall uncover the specified Work. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the City. If such Work is in accordance with the Contract Documents, the City shall pay such costs.

LXIV. CORRECTION OF WORK

A. The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby.

B. Unless specified otherwise in the terms of an applicable special warranty required by the Contract Documents, the Contractor shall warrant the work for a period of one year after: Substantial Completion of the Work or a designated portion thereof; or the date of commencement of warranties established under Subparagraph LIV(A). During such warranty period, if the City discovers that any of the Work is not in accordance with the Contract Documents, the City shall notify the Contractor in writing. The City shall give such notice promptly after discovery of the condition. Upon such notice, the Contractor shall promptly correct the work, at the Contractor's expense, unless the City has previously given the Contractor a written acceptance of such condition. The Contractor shall extend the warranty period for any portions of Work first performed after Substantial Completion. The Contractor shall extend the warranty period for the number of days between Substantial Completion and the actual completion of such Work. All obligations under this Subparagraph LXIV(B) shall survive acceptance of the Work under the Contract and termination of the Contract.

C. The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are not corrected by the Contractor nor accepted by the City.

D. If the Contractor fails to correct non-conforming Work within a reasonable time, the City may correct it in accordance with Paragraph IX. If the Contractor does not proceed with correction of such non-conforming Work within a reasonable time fixed by written notice from the Architect, the City may remove it and store the salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten days after written notice the City may upon ten additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages owed by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs owed by the Contractor, the City shall automatically reduce the Contract Sum by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the City.

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

F. Nothing contained in this Paragraph LXIV shall establish a period of limitation with respect to other obligations that the Contractor might have under the Contract Documents. The one year warranty period as described in Subparagraph LXIV(B) relates only to the specific obligation of the Contractor to correct the Work and has no relationship to the time within which the City may enforce the Contractor's obligation to comply with the Contract Documents, nor to the time within which the City may commence proceedings to establish the Contractor's liability other than specifically to correct the Work.

LXV. ACCEPTANCE OF NON-CONFORMING WORK

If the City elects in writing to accept Work that is not in accordance with the requirements of the Contract Documents, the City may do so instead of requiring its removal and correction. Upon such election, the City and Contractor shall reduce the Contract Sum as appropriate and equitable. The City and Contractor shall make such adjustment whether or not the City has made final payment under the Contract Documents. The Contractor shall pay the difference, if any, to the City within 10 days from such adjustment.

MISCELLANEOUS TERMS

LXVI. GOVERNING LAW

The Contract shall be governed by the lasws of the State of Nebraska.

LXVII. SUCCESSORS AND ASSIGNS

The City and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto as to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign or delegate the Contract as a whole without written consent of the other. If either party attempts to make such an assignment or delegation without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

LXVIII. WRITTEN NOTICE

The City, Contractor or Architect may deliver written notice in person to the individual; to a member of the firm or entity; or to an officer of the corporation for which it was intended. Written notice may be delivered by registered or certified mail to the last business address known to the party giving notice. Delivery by either method is hereby acknowledged as sufficient and adequate service of any written notice related to the Contract.

LXIX RIGHTS AND REMEDIES

A. Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to duties, obligations, rights and remedies otherwise imposed or available by law.

B. No action or failure to act by the City, Architect or 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.

LXX. COMMENCEMENT OF STATUTORY LIMITATION PERIOD

A. Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;

B. Between Substantial Completion and Final Certificate for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and

C. After Final Certificate for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final certificate for Payment, any applicable statue of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any warranty provided under Paragraph XVII, the date of any correction of the Work or failure to correct the Work by the Contractor under Paragraph LXTV, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or City, whichever occurs last.

D. Notwithstanding any provision herein to the contrary, no applicable statute of limitations shall commence for any portion of the Work that is not in accordance with the requirements of the Contract Documents, that would not be visible or apparent upon conducting a reasonable investigation, and that is not discovered by the City until after the date that would otherwise be the date of commencement of the applicable statute of limitations. In such case, the applicable statute of limitations shall commence on the date of such discovery by the City.

LXXI. INDEPENDENT CONTRACTOR

The City is interested only in the results obtained and Contractor shall perform as an independent contractor with the sole control of the manner and means of performing the Work required under the Contract. Contractor shall complete the Contract according to its own means and methods of work, which shall be in the exclusive charge and control of Contractor, and which shall not be subject to control or supervision by the City except as to the results of the Work. Contractor is, for all purposes arising out of the Contract, an independent contractor, and the Contractor or any Subcontractor, agent, employee or representative and employees or agents of any of them shall not be deemed an employee of the City. It is expressly understood and agreed that Contractor shall in no manner to entitled to any benefits to which the City's employees are entitled including, but not limited to, overtime, any retirement benefits, workers' compensation benefits and injury leave, or other benefits.

TERMINATION OR SUSPENSION

LXXII. TERMINATION BY THE CONTRACTOR

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

1. Issuance of an order of a court or other public authority having jurisdiction;
2 An act of government, such as a declaration of national emergency, making material unavailable;
3. The failure of the Architect to issue a certificate for Payment when the Architect has not notified the Contractor of the reason for withholding certification as provided in Subparagraph XLIX(A), or the failure of the City to make payment on a Certificate for Payment within the time stated in the Contract Documents; or
4. The City's repeated suspensions, delays or interruptions as described in Paragraph LXXIV constitute in the aggregate more than 100 percent of the total number of days scheduled for completion or 120 days in any 365-day period, whichever is less.

B. If one of the above reasons exist; the Contractor may upon seven additional days' written notice to the City and Architect, terminate the Contract and recover from the City 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.

C. If the City has persistently failed to fulfill obligations important to the progress of the Work under the Contract Documents, causing the Contractor to stop the Work for a period of 60 days through no act or fault of the Contractor (or a Subcontractor or their agents or any other persons performing portions of the Work under the contract with the Contractor) the Contractor may, upon seven additional days' written notice to the City and the Architect, terminate the Contract and recover from the City as provided in Subparagraph LXXII(B)

LXXIII. TERMINATION BY THE CITY FOR CAUSE

A. The City may terminate the Contract if the Contractor:

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

B. When any of the above reasons exist, the City may without prejudice to any other rights or remedies of the City may (after giving the Contractor and the Contractor's surety, if any, seven days' written notice) terminate employment of the Contractor. In addition the City 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 XL; and
3. Finish the Work by whatever reasonable method the City may deem expedient.

C. When the City terminates the Contract for one of the reasons stated in Subparagraph LXXIII(A), the Contractor shall not receive further payment until the Work is finished.

D. If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, (including compensation for the Architect's services and expenses made necessary thereby) such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the City. The Architect shall certify any amount to be paid to the Contractor or City upon application, and this obligation for payment shall survive termination of the Contract.

LXXIV. SUSPENSION BY THE CITY FOR CONVENIENCE

A. The City 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 City may determine.

B. The City and Contractor shall make an adjustment for increases in the cost of the Contract caused by suspension, delay or interruption. Such adjustment shall include a reasonable profit on the increased cost. No adjustment shall be made to the extent that:

1. Performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

2. An equitable adjustment is made or denied under another provision of this Contract.

C. Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

LXXV. TERMINATION BY THE CITY FOR CONVENIENCE

A. The City may at its option, terminate this Contract in whole or in part at any time without cause by written notice thereof to the Contractor.

B. Upon any such termination, the Contractor agrees to waive any claims for damages, including loss of anticipated profits, on account thereof, and as the sole right and remedy of the Contractor, the City shall pay Contractor in accordance with this Paragraph. The provisions of the Contract which by their nature survive final acceptance of the Work, shall remain in full force and effect after such termination to the extent provided in such provisions.

C. Upon receipt of any such notice of termination, the Contractor shall, unless the Notice directs otherwise, immediately:

1. Discontinue the Work to the extent specified by the City

2. Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of that portion of the Work, if any, the City has directed not to be discontinued;

3. Promptly make every reasonable effort to procure cancellation upon satisfactory terms as determined by the City of all orders and subcontracts not related to that portion of the Work, if any, the City has directed not to be discontinued;

4. Do only such other activity as may be necessary to preserve and protect work already in progress and to protect materials and plants and equipment on the Project Site or in transit thereto.

D. Upon such termination, the obligations of the Contract shall continue as to portions of the Work already performed and as to bona fide obligations the Contractor assumed prior to the date of termination.

E. Upon termination, the City shall pay the Contractor the full cost of all Work properly done by the Contractor to the date of termination not previously paid for by the City. If at the date of such termination the Contractor has properly prepared or fabricated off site any goods for subsequent incorporation in the Work, the City may direct the Contractor to deliver such goods to the Site or to such other place as the City may reasonably determine, whereupon the City shall pay to the Contractor the cost for such goods and materials.

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