

CONTRACT DOCUMENTS

for

TWELVE (12) 2021 TREADMILLS



ABOVE AND BEYOND. BY DESIGN.

CITY OF OVERLAND PARK
CONTRACT DOCUMENTS
TWELVE (12) 2021 TREADMILLS
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CITY OF OVERLAND PARK, KANSAS

NOTICE TO BIDDERS

Sealed bids for **TWELVE (12) 2021 TREADMILLS** will be received by the City of Overland Park, Kansas, at the office of the City Clerk, City Hall, 8500 Santa Fe Drive, Overland Park, Kansas 66212 until 2:00 p.m. local time on **November 2, 2021**. At that time all sealed bids will be transferred to the **City Council Chamber**, City Hall, where they will be publicly opened and read aloud. Any bid received after the designated closing time will be returned unopened.

All bids shall be submitted in sealed envelopes addressed to the City Clerk of Overland Park, Kansas, and marked "**BID FOR: TWELVE (12) 2021 TREADMILLS**." Copies of the bidding documents including the City of Overland Park Standard Specifications, Project Specific Special Provisions, Plans, and other Contract Documents are on file at the office of the **Matt Ross Community Center** located at **8101 Marty Street, Overland Park, Kansas 66204**. Contractors desiring the contract documents for use in preparing bids may obtain a set of such documents by calling **913-895-6390**.

Bids shall be made upon the form provided in ink or typewritten. Numbers shall be stated both in writing and in figures; the signature shall be long hand; and the complete form shall be without alteration or erasure. On alternate items for which a bid is not submitted, a written indication of "no bid" on the bid form is required.

No oral, facsimile or telephonic bids or alterations will be considered.

The following items must be included in the sealed envelope with the bid:

- a. Bid
- b. 5% Bid Security--Bid Bond (See below.)

Each bidder shall file with its bid a bid bond in an amount of not less than five percent (5%) of the total bid, which shall be retained by the City of Overland Park until a contract for the project has been executed. Bid bonds will be returned to the unsuccessful bidders, with the exception of the second qualifying bidder, at such time as their bids are rejected. The bid deposit of the successful bidder and the second qualifying bidder will be returned when satisfactory bonds in an amount equal to 100% of the contract amount, required insurance certificates and other required documents shall have been furnished and the contract documents have been executed.

In the event the successful bidder is unable to execute the contract, for whatever reason, City may exercise its legal prerogatives, including, but not limited to, enforcement of its rights as to the bid security.

The City reserves the right to accept or reject any and all bids and to waive any technicalities or irregularities therein. Bids may be modified or withdrawn by written request of the bidder received in the office of the City Clerk, prior to the time and date for bid opening; provided, however, that no bidder may withdraw its bid for a period of thirty (30) days from the date set for the opening thereof. ALL BIDDERS AGREE THAT REJECTION SHALL CREATE NO LIABILITY ON THE PART OF THE CITY BECAUSE OF SUCH REJECTION. IT IS UNDERSTOOD BY ALL BIDDERS THAT AN UNSUCCESSFUL BIDDER HAS NO CAUSE OF ACTION AGAINST THE CITY FOR BID PREPARATION COSTS. THE FILING OF ANY BID IN RESPONSE TO THIS INVITATION SHALL CONSTITUTE AN AGREEMENT OF THE BIDDER TO THESE CONDITIONS.

Bid prices shall include delivery of the material to the location specified on the Bid form. Delivery date shall be stated on the Bid form.

Publish: *Legal Record*

Tuesday, October 12, 2021

INSTRUCTIONS TO BIDDERS

- IB-1. **BIDS:** All bids shall be made on the forms provided in this bound volume of contract documents and shall be in compliance with the Notice to Bidders. All appropriate blanks shall be filled in and shall be signed by the appropriate individual on behalf of him/herself or the entity submitting the bid. Each bid must be enclosed in a sealed envelope plainly marked "BID FOR **TWELVE (12) 2021 TREADMILLS**". As per the Notice to Bidders, bid shall be addressed to:

CITY OF OVERLAND PARK, KANSAS
Attention: City Clerk
8500 Santa Fe Drive
Overland Park, Kansas 66212

IB-2. **DEFINITIONS:**

All definitions set forth in the General Conditions or in other contract documents are applicable to the Bidding Documents.

- a. "Alternate Bid" is an amount stated in the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in the work, as described in the Bidding Documents, is accepted.
- b. "Addendum" is a document issued by the City after initial issuance of the Notice to Bidders and Bidding Documents, which contains additional or different information pertinent to the Project to be awarded.
- c. "Base Bid" is the sum stated in the Bid for which the Bidder offers to perform the work described in the Bidding Documents as the base, to which work may be added or from which work may be deleted for sums stated in Alternate Bids.
- d. "Bid" is the offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the work to be performed (and the City reserves the right to reject any and all bids).
- e. "Bidder" is any individual, partnership, corporation, association or other entity submitting a Bid for the work.
- f. "Bidding Documents" are all documents related to a Bidder's submitting a Bid, including, but not limited to, the advertisement for Bids, if applicable, Instructions to Bidders, the Bid form, other sample bidding and contract forms and the proposed contract documents, including any addenda issued prior to receipt of Bids. At the City's option, Bidders may be required to complete and submit a prequalification statement.
- g. "City" means the City of Overland Park, Kansas.
- h. "Contractor" is the Bidder that the City has determined to be the successful Bidder and which has, following such determination and declaration, thereafter executed a Contract for construction with the City to perform the Work described herein.
- i. "Notice of Award" is the written notice by the City to the apparent Successful Bidder stating that upon compliance with the conditions precedent enumerated therein, within the time specified, the City will sign and deliver the Contract.

- j. "Notice to Bidders" is the document issued by the City inviting bids, advising bidders of where Bidding Documents are available, the cost for obtaining Bidding Documents; the time and place of Bid submission; and Bid opening.
- k. "Site" is the physical location where the Project work will be constructed.
- l. "Successful Bidder" is the person or entity who is determined and declared by the City to have submitted the lowest and best responsible Bid in conformity with the terms of the Bidding Documents.
- m. "Unit Price" means an amount stated in the Bid as a price per unit of measurement for materials or services as described in the Bidding Documents or in the proposed contract documents.

IB-3. BIDDER'S REPRESENTATIONS: Each Bidder by making its Bid represents that:

- a. It has read and understands the Bidding Documents, and its Bid is made in accordance therewith.
- b. It has visited the Site, has familiarized itself with the local conditions under which the work is to be performed, has reviewed all published reports, inspections and other documents relating to the project and has correlated its observations with the requirements of the proposed Contract Documents.
- c. Its Bid is based upon the materials, systems and equipment required by the Bidding Documents except such substitutions approved by the City through issuance of Addenda.
- d. It has familiarized itself with state, federal law and local ordinances, regulations, and permitting requirements which may affect cost and/or progress or performance of the work.
- e. Bidder will execute the Agreement and be bound to all the Contract Documents upon its selection by the City.

IB-4. BIDDING DOCUMENTS: Bidders may obtain complete sets of the Bidding Documents from the City or the consultant for the sum stated in the Notice to Bidders. Neither the City nor the consultant shall be responsible for the accuracy, completeness, or sufficiency of any Bidding Documents obtained from any source other than the source indicated in the Notice to Bidders. Obtaining copies of Bidding Documents from any other source(s) may result in obtaining incomplete and inaccurate information or result in failure to receive any addenda, corrections, or other revisions to these documents that may be issued.

Bidders shall use complete sets of Bidding Documents in preparing Bids; neither the City nor the consultant assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents. Contractors should read and be fully familiar with all contract documents before submitting a bid. In submitting a bid, the bidder warrants that it has read the contract documents and is fully familiar therewith and that it has visited the site of the work to fully inform itself as to all existing conditions and limitations and shall include in its bid a sum to cover the cost of all items of the work.

All bidders shall verify that they have considered all written addenda. Neither the City nor the consultant shall be responsible for oral instructions.

Any written addenda issued during the time of bidding shall be covered and included in the bid. There will be no clarifications or exceptions allowed on the bid. Bids are for a total bid package, total contract price.

The City in making copies of the Bidding Documents available on the above terms does so only for the purpose of obtaining Bids on the work and does not confer a license or grant for any other use.

- IB-5. DEFECTS IN BIDDING DOCUMENTS: Bidders shall promptly notify the City of any errors, omissions, discrepancies or inconsistencies (hereinafter "defects") which they may discover upon examination of the Bidding Documents or of the Site and local conditions. Bidders will not be permitted to take advantage of any such defect.

Bidders requiring clarification or interpretation of the Bidding Documents shall make a written request which shall reach the consultant at least seven days prior to the date for receipt of Bids.

Any interpretation, correction or change of the Bidding Documents will be made by Addendum. Interpretations, corrections or changes of the Bidding Documents made in any other manner will not be binding, and Bidders shall not rely upon such interpretations, corrections and changes.

- IB-6. SUBSTITUTIONS: The materials, products and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution.

No substitution will be considered prior to receipt of Bids unless written request for approval has been received by the consultant at least seven (7) days prior to the date for receipt of Bids. Each such request shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitute including drawings, cuts, performance and test data and any other information necessary for an evaluation. A statement setting forth any changes in other materials, equipment or other work that incorporation of the substitute would require shall be included. The proposed substitute shall meet all the same criteria as is set out in the Contract Documents for substitutions after award of the Contract, and the burden of proof of the merit of the proposed substitute is upon the Bidder. The City's decision of approval or disapproval of a proposed substitution shall be final.

If the consultant approves any proposed substitution prior to receipt of Bids, such approval will be set forth in a written Addendum. Bidders shall not rely upon approvals made in any other manner.

No substitutions will be considered after the contract award unless specifically provided in the General Conditions.

- IB-7. ADDENDA: Written addenda will be mailed or delivered to all who are known by the consultant to have received a complete set of Bidding Documents.

Copies of written addenda will be made available for inspection wherever Bidding Documents are on file for that purpose.

No written addenda will be issued later than four (4) days prior to the date for receipt of Bids except an Addendum withdrawing the request for Bids or one which includes postponement of the date for receipt of Bids.

Each Bidder shall ascertain prior to submitting its Bid that it has received all written addenda issued, and it shall acknowledge its receipt in its Bid. Failure to acknowledge all Addenda could result in rejection of Bid.

IB-8. INSURANCE:

- a. General: The Contractor shall secure and maintain, throughout the duration of the agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Contractor shall provide certificates of insurance and renewals thereof on forms provided by the City or on forms acceptable to the City. The City shall be notified by receipt of written notice from the insurer or the Contractor at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

Bidders are referred to Article GC-40 of the General Conditions for additional insurance information.

- b. Notice of Claim Reduction of Policy Limits: The Contractor, upon receipt of notice of any claim in connection with the agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

The Contractor shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the contract documents) if the Contractor's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Contractor shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

- c. Commercial General Liability:
Limits –

General Aggregate:	\$1,000,000
Products / Completed Operations Aggregate:	\$1,000,000
Personal & Advertising Injury:	\$ 500,000
Each Occurrence:	\$ 500,000

Policy MUST include the following conditions:

1. Pollution Liability (Applicable only to contracts involving pollutants such as asbestos & lead abatement, sludge or other waste abatement, etc.)
2. **NAME CITY OF OVERLAND PARK AS "ADDITIONAL INSURED"**

- d. Automobile Liability: Policy shall protect the Contractor against claims for bodily injury and/or property damage arising from the ownership or use of any owned, hired and/or non-owned vehicle.

Limits -

Combined Single Limits, Bodily Injury and Property Damage - \$500,000 Each Accident

Policy MUST include the following condition:

NAME CITY OF OVERLAND PARK AS "ADDITIONAL INSURED"

- e. Workers' Compensation: This insurance shall protect the Contractor against all claims under applicable state workers' compensation laws. The Contractor shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of workers' compensation law. The policy limits shall not be less than the following:

Workers' Compensation:	Statutory
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Employer's Liability:

Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee

- f. Industry Ratings: The City will only accept coverage from an insurance carrier who offers proof that it:
1. Is authorized to do business in the State of Kansas;
 2. Carries a Best's policy holder rating of A- or better; and
 3. Carries at least a Class VIII financial rating, or
 4. Is a company mutually agreed upon by the City and Contractor.

- g. Subcontractors' Insurance: If a part of the Contract is to be sublet, the Contractor shall either:
1. Cover all subcontractors in its insurance policies, or
 2. Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.

Whichever option is chosen, Contractor shall indemnify and hold harmless the City as to any and all damages, claims or losses, including attorney's fees, arising out of the acts or omissions of its subcontractors.

- h. Railroad Protective Liability: Additional requirement applicable when working on railroad property.

Named Insured: Applicable Railroad
Limits – Bodily Injury & Property Damage: Per Railroad Requirements

Policy MUST include the following condition:

NAME CITY OF OVERLAND PARK AS “ADDITIONAL INSURED.”

- i. Aircraft Liability: Additional requirement applicable for aerial photograph or contract involving any use of aircraft.

Limits- Single Limit Bodily Injury; Including Passengers; and Property Damage:
\$1,000,000 Each Occurrence

Coverage must include all Owned, Hired and Non-Owned Aircraft.

Policy MUST include the following condition:

NAME CITY OF OVERLAND PARK AS “ADDITIONAL INSURED” ON THE HIRED AND NON-OWNED AIRCRAFT LIABILITY.

- j. Contractor Property Insurance (“Builder’s Risk”): [Additional requirement when constructing a building.] Unless otherwise provided in the contract documents, Contractor shall procure and maintain property insurance from insurance companies authorized to do business in the State of Kansas upon the entire project to the full insurable value of the project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Contractor shall include as additional insured's the interests of City, Contractor, design consultants, subcontractor and sub-subcontractors, and shall insure against the risk of direct physical loss including but not limited to fire and extended coverage, theft, vandalism, malicious

mischievous, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the contract documents. The property insurance shall include physical loss or damage to the work, including materials and equipment in transit, at the Site or at another location as may be indicated in Contractor's application for payment and approved by City. All deductibles are the responsibility of the Contractor.

1. Unless the contract documents provide otherwise, Contractor shall procure and maintain boiler and machinery insurance that will include the interests of City, Contractor, design consultants, subcontractors and sub-subcontractors.
2. Prior to commencing any work, Contractor shall provide City with certificates evidencing that (1) all Contractor's insurance obligations required by the contract documents are in full force and in effect and will remain in effect until Contractor has completed all of the work and has received final payment from City and (2) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to City. Contractor's property insurance shall not lapse or be canceled if City occupies a portion of the work. Contractor shall provide City with the necessary endorsements from the insurance company prior to occupying a portion of the work.
3. Any loss covered under Contractor's property insurance shall be adjusted with City and Contractor and made payable to both of them as trustees for the insured's as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article II of the Agreement.
4. City and Contractor waive against each other and City's separate contractors, design consultants, subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Contractor and City shall, where appropriate, require similar waivers of subrogation from City's separate contractors, design consultants and subcontractors and shall require each of them to include similar waivers in their contracts.

IB-9. **BID SECURITY**: Each Bid shall be accompanied by a bid bond in an amount of not less than five percent (5%) of the total Bid. In addition to other legal remedies, the amount of said bid security may be retained by and forfeited to the City as liquidated damages if such Bid is accepted and the Successful Bidder fails to enter into an agreement in the form prescribed, within the time specified in the Notice of Award by the City; provided, however, that the City shall not necessarily be limited in protecting its legal rights to enforcement of its rights under the bid security. Deposits will be returned to unsuccessful Bidders, with the exception of the second qualifying Bidder, at such time as their Bids are rejected. The Bid deposit of the Successful Bidder and the second qualifying Bidder will be returned when satisfactory insurance certificates, performance bond and statutory or labor and material payment bond in an amount equal to 100% of the agreement and other documents required by the General Conditions have been furnished and the contract documents have been executed.

IB-10. **TAXES**: It is the intent of the City to supply the Contractor with a Project Exemption Certificate for use in purchasing materials and supplies used on the project. The Contractor shall, in preparing its Bid, omit from its computed costs all sales and compensation taxes. Upon issuance of a Kansas tax exemption number, two (2) copies of the Project Exemption Certificate (Form PR-74a) will be forwarded to the Contractor. Upon completion of the project, the City will provide the State

of Kansas with the project completion date and the State will issue a Project Completion Certification. This will be forwarded to the Contractor who must sign and return it to the City. All invoices must be retained by the Contractor for a period of five (5) years and are subject to audit by the Kansas Department of Revenue. Final payment will not be made to the Contractor until the City has received the Project Completion Certification from the Contractor along with a Consent of Surety Company to Final Payment.

- IB-11. LIQUIDATED DAMAGES: In case of failure on the part of the Contractor to effect completion within the time specified, the City shall have the right to assess against the Contractor as liquidated damages, fixed and agreed to in advance, in the amount stated in the Agreement for each 24-hour calendar day, including Sundays and holidays.
- IB-12. MODIFICATION OR WITHDRAWAL OF BIDS: Bids may be modified or withdrawn by written request of the Bidder received in the office of the City Clerk, prior to the time and date for Bid opening. No Bidder may withdraw its Bid for a period of thirty (30) days from the date set for the opening thereof.
- IB-13. ACCEPTANCE AND REJECTION OF BIDS AND AWARD OF CONTRACT: The contract will be awarded to the lowest and best, responsible Bidder as determined by the City.
- The City reserves the right to reject any and all Bids; to waive any and all irregularities and informalities; to negotiate contract terms with the Successful Bidder; and the right to disregard all nonconforming, non-responsive or conditional Bids.
- In evaluating Bids, the City may consider the qualification of Bidders, whether or not the Bids comply with the prescribed requirements, and alternates and Unit Prices if requested in the Bid forms. The City reserves the right to reject the Bid of any Bidder who does not pass the evaluation to the City's satisfaction.
- IB-14. BONDS: The Contractor to whom the work is awarded will be required to furnish a Performance Bond, Maintenance Bond, and a Statutory or Labor and Material Payment Bond in the forms hereinafter provided in an amount equal to 100 percent (100%) of the amount of the Contract to be awarded in each case in addition to any other bonds as may be required by the contract documents. With each bond there shall be filed with the City one copy of "Power of Attorney" certified to include the date of the bonds.
- IB-15. INDEMNIFICATION: The Contractor shall be required to indemnify and hold the City harmless as set forth in Article GC-34 of the General Conditions.
- IB-16. BID PREFERENCE: Existing State law (K.S.A. 75-3740a) requires that, to the extent permitted by federal law and regulations, the City, when letting contracts for Bids, must require any Successful Bidder-Contractor domiciled outside the state of Kansas to submit a Bid the same percent less than the lowest Bid submitted by a responsible Kansas contractor as would be required of such Kansas domiciled contractor to succeed over the bidding Contractor domiciled outside Kansas on a like contract let in the foreign Bidder's domiciliary state. All Bids are received on this condition, and if it is determined by the City that the apparent lowest and best Bidder is a foreign domiciled contractor, such contractor shall be awarded the Contract only if such Contractor's Bid complies with this state law requirement.

All Bidders domiciled outside of the State of Kansas may be requested to furnish the City with a copy of their state's preferential bidding statutes, if any.

- IB-17. NON-DISCRIMINATION, AFFIRMATIVE ACTION AND SEXUAL HARASSMENT: The Contractor shall comply with Article GC-68 of the General Conditions.
- IB-18. APPOINTMENT OF SERVICE AGENT: Kansas Statutes Annotated 16-113 requires that non-resident Contractors appoint an agent for the service of process in Kansas. The executed appointment must then be filed with the Secretary of State, Topeka, Kansas. Any Successful Bidder-Contractor domiciled outside the State of Kansas must comply with these statutory requirements.
- IB-19. SUBCONTRACTING: As provided in Article GC-38, the Contractor may utilize the services of subcontractors on those parts of the work which, under normal contracting practices, are performed by subcontractors.
- IB-20. CONFLICT OF INTEREST: 31 USC Section 1352 requires all sub-grantees, Contractors, subcontractors and consultants who receive federal funds via the City to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan or cooperative agreements.

In addition, contract applicants, recipients and sub-recipients must file a form disclosing any expenditures they make for lobbying out of non-federal funds during the agreement period. Necessary forms are available from the City Engineer and should be returned to the City with other contract documents. It is the responsibility of the general Contractor to obtain executed forms from any subcontractors who fall within the provisions of the Code and to provide the City with the same.

BID

TWELVE (12) 2021 TREADMILLS

TO: CITY OF OVERLAND PARK,
JOHNSON COUNTY, KANSAS

Neither the City nor Consultant shall be responsible for the accuracy, completeness, or sufficiency of any bid documents obtained from any source other than the source indicated in the Notice to Bidders. Obtaining copies of the bidding documents including the City of Overland Park Standard Specifications, Project Specific Special Provisions, Plans, and other Contract Documents from any other source(s) may result in obtaining incomplete and inaccurate information. Obtaining these documents from any source other than directly from the source listed in the Notice to Bidders may also result in failure to receive any addenda, corrections, or other revisions to these documents that may be issued.

The undersigned bidder hereby proposes to mobilize and furnish all materials, supplies, transportation, tools, equipment and plant, perform all necessary labor and construct, install and complete all work stipulated in, required by, and in conformity with the proposed contract documents (including all documents referred to therein) and any and all addenda thereto, for and in consideration of prices as follows:

COST of Twelve (12) 2021 New Treadmills \$ _____

Additional Warranty Option(s) \$ _____

Cost of Delivery \$ _____

Cost of Relocation of Existing Treadmills to OP Fire Stations \$ _____

VARIANCES: (For equipment that differs from the Specifications, please identify the Section and Paragraph from the Specifications. Attach additional pages, if necessary.)

Bids shall include:

- Bidding company will provide removal of current eleven (11) treadmills at Tomahawk Ridge Community Center.

- Bidding company will provide delivery of current eleven (11) treadmills at Tomahawk Ridge Community Center to specific locations for OPFD and OPPD.

Delivery of the **Twelve (12) 2021 Treadmills** as described above will be made **no later than 120 days from receipt of order** to the Tomahawk Ridge Community Center, 11902 Lowell Ave, Overland Park, Kansas 66213.

1. The undersigned further agrees to begin upon the date stated in the Notice to Proceed and to complete the work, if this bid is accepted, **no later than 120 calendar days from receipt of order.**

The undersigned also declares that it understands that if not preset by the City the time to begin construction and to complete the work will be one factor considered in determining the lowest and best responsible bidder.

The undersigned also declares that he/she understands that liquidated damages shall be assessed against Contractor, as stipulated liquidated damages and not as a penalty, in the amount of **\$0.00**, for each and every calendar day the work remains incomplete over the specified completion time(s) stated above.

2. In submitting this bid, the undersigned declares that it is of lawful age and executed the accompanying bid on behalf of the bidder therein named, and that it had lawful authority so to do. The undersigned further declares that it has not directly or indirectly entered into any agreement, expressed or implied, with any bidder or bidders, having for its object the controlling of the price or amount of such bid or any bids, the limiting of the bid or bidders, the parceling or farming out to any bidder or bidders, or other persons, of any part of the contract or any part of the subject matter of the bid or bids or of the profits thereof, and that it has not and will not divulge the sealed bid to any person whomsoever, except those having a partnership or other financial interest with bidder in said bid or bids, until after sealed bid or bids are opened.
3. The undersigned further declares that it has carefully examined the Notice to Bidders, Instructions to Bidders and other contract documents, and that it has inspected the actual location of the work, together with the local sources of supply, and has satisfied itself as to all conditions and quantities, and understands that in signing this Bid it waives all right to plead any misunderstanding regarding the same.
4. The undersigned hereby agrees to furnish the required bonds and insurance certificates and execute an agreement within ten (10) calendar days from and after notice of the award of the contract, and failure of the bidder to do so shall constitute a default, and the City may thereafter take such steps to protect its legal rights as it deems in its best interest, including, but not limited to, enforcement of its rights as to bid security.
5. It is understood that the City will pay in a prompt and timely manner pay estimates when submitted and approved by the Architect/Engineer and further approved by the City staff coordinator for the project, all as provided in the contract documents.
6. Undersigned acknowledges receipt of the City of Overland Park Standard Specifications, Project Specific Special Provisions, Plans, and other Contract Documents and the following addenda (complete) _____.

Bid security is provided per the Instructions to Bidders which the undersigned agrees is subject to being forfeited to and becoming the property of the City as liquidated damages and not as a penalty,

together with other legal remedies the City may choose to invoke, all as set forth in the Instructions to Bidders Section IB-9, should this Bid be accepted and the contract be awarded to this bidder and it should fail to enter into an agreement in the form prescribed and to furnish the required insurance, bonds and other required documents within ten (10) calendar days as above stipulated, otherwise the bid security shall be returned or notice of release given to the undersigned upon signing of the agreement and delivery of the approved bonds and other required documents to the City of Overland Park, Kansas.

DATED this _____ day of _____, 20____.

(SEAL)

Contractor

Signature

Printed Name

Title

Street Address or P.O. Box

City, State, Zip

Telephone or Mobile Number

Email Address

CITY OF OVERLAND PARK, KANSAS

AGREEMENT BETWEEN
CITY OF OVERLAND PARK, KANSAS
AND CONTRACTOR

TWELVE (12) 2021 TREADMILLS

THIS AGREEMENT is made and entered into this _____ day of _____, 20____, by and between the City of Overland Park, Kansas, hereinafter the "City", and _____, hereinafter the "Contractor".

WITNESSETH:

WHEREAS, the City has caused to be prepared, in accordance with the law, Notice to Bidders, Instructions to Bidders, Bid, this Agreement, Specifications, and other Contract Documents, as defined in the General Conditions, for the work herein described, and has approved and adopted these said Contract Documents and has caused to be published, in the manner and for the time required by law, an advertisement inviting sealed Bids for furnishing construction materials, labor, tools, equipment and transportation necessary for, and in connection with, the construction of public improvements in accordance with the terms of this Agreement; and

WHEREAS, the Contractor, in response to the advertisement, has submitted to the City, in the manner and at the time specified, a sealed Bid in accordance with the terms of this Agreement; and

WHEREAS, the City, in the manner prescribed by law, has publicly opened, examined and evaluated the Bids submitted, and as a result of this process has, in accordance with the law, determined and declared the Contractor to be the lowest and best responsible bidder for the construction of the public improvements, and has duly awarded to the Contractor a contract therefor upon the terms and conditions set forth in this Agreement and for the sum or sums named in the Bid attached to and made a part of this Agreement.

NOW, THEREFORE, in consideration of the compensation to be paid the Contractor, and of the mutual agreements herein contained, the parties hereto have agreed, and hereby agree, the City for itself and its successors, and the Contractor for itself, himself/herself or themselves, its, his/her or their successors and assigns, or its, his/her or their executors and administrators, as follows:

ARTICLE I. The Contractor will furnish at its own cost and expense all labor, tools, equipment, materials and transportation required to construct and complete the work as designated, described and required by the Contract Documents, to wit: **TWELVE (12) 2021 TREADMILLS** all in accordance with the Contract Documents, on file with the City Clerk of Overland Park, Kansas, all of which Contract Documents together with this Agreement form the Contract, and are as fully a part hereof as if repeated verbatim herein; all work to be done in a good, substantial and workmanlike manner to the entire satisfaction of the City, and in accordance with the laws of the City, the State of Kansas and the United States of America. All terms used herein shall have the meanings ascribed to them in the General Conditions unless otherwise specified.

ARTICLE II. The City shall pay to the Contractor for the performance of the work embraced in this Contract, and the Contractor will accept in full compensation therefor, the sum of _____

DOLLARS (\$_____) (subject to adjustment as provided by the Contract Documents) for all work covered by and included in the Contract award and designated in the foregoing Article I, payment thereof to be made in cash or its equivalent and in the manner provided in the Contract Documents.

ARTICLE III. The Contractor shall commence work upon the date stated in the Notice to Proceed, and will complete all work covered by this Contract no later than **120 calendar days from receipt of order**. Time is of the essence. Accordingly, liquidated damages shall be assessed against Contractor, as stipulated liquidated damages and not as a penalty, in the amount of **\$0.00** for each and every calendar day the work remains incomplete over the specified completion time(s) stated above.

ARTICLE IV. The Contractor shall not subcontract, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof without previous written consent of the City. In case such consent is given, the Contractor shall be permitted to subcontract a portion thereof, but shall self perform not less than forty percent (40%) of the total Contract Price based upon the unit prices within the Bid submitted to the City by the Contractor. No subcontracts, or other transfer of Contract, shall release the Contractor of its liability under the Contract and Bonds applicable thereto.

ARTICLE V. Contractor specifically acknowledges and confirms that: (1) it has visited the site, made all inspections it deems appropriate and has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by it as specified herein and in the other Contract Documents and knowingly accepts same; (2) it has furnished copies of all Contract Documents to its insurance carrier(s) and its surety(ies); and (3) its insurance carrier(s) and surety(ies) agree to be bound as specified herein, in the Contract Documents and in the insurance policy(ies) and bonds as to liability and surety coverage.

ARTICLE VI. It is specifically agreed between the parties executing this Agreement that the Contract Documents are not intended to create any third party beneficiary relationship nor to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.

ARTICLE VII. This Agreement, together with the other Contract Documents, constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except as provided herein or in the other Contract Documents.

ARTICLE VIII. This Agreement is entered into, under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Kansas.

ARTICLE IX. Should any provision of this Agreement or the other Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement and/or the other Contract Documents shall be unaffected thereby and shall continue to be valid and enforceable.

ARTICLE X. All notices required under this Agreement shall be sent via U.S. mail, first class, postage prepaid, personal delivery, or other nationally recognized courier service to the following:

If to City:

City of Overland Park
Attention: Director of Parks & Recreation
City Hall
8500 Santa Fe Drive
Overland Park, KS 66212

If to Contractor:

[CONTRACTOR INFO]

IN WITNESS WHEREOF, the City of Overland Park, Kansas, has caused this Agreement to be executed on its behalf, thereunto duly authorized, and the said Contractor has executed ____ counterparts of this Contract in the prescribed form and manner, the day and year first above written.

CITY OF OVERLAND PARK, KANSAS

ATTEST:

By _____
Carl Gerlach
Mayor

Elizabeth Kelley
City Clerk

APPROVED AS TO FORM:

Trevor L. Stiles
Sr. Assistant City Attorney

CONTRACTOR

(SEAL)

By _____
Title _____ President

(If the Contract is not executed by the president of the corporation or general partner of the partnership, please provide documentation which authorizes the signatory to bind the corporation or partnership. If a corporation, Contractor shall furnish City a current certificate of good standing, dated within ten (10) days of the date of this Contract.)

CITY OF OVERLAND PARK, KANSAS

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned _____ of _____ as principal, hereinafter referred to as the "Contractor," and _____, a corporation organized under the laws of the State of _____ and authorized to transact business in the State of Kansas, as surety, are held and firmly bound unto the City of Overland Park, Kansas, hereinafter referred to as "City," in the penal sum of _____ Dollars (\$ _____), lawful money of the United States of America, for the payment of which sum well and truly to be made we bind ourselves, and our heirs, executors, administrators, successors and assigns, jointly and severally by these presents:

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the above bonded Contractor, has on the ____ day of _____, 20____, executed a written Agreement with the aforesaid City for furnishing in a good, substantial and workmanlike manner all construction, labor, materials, equipment, tools, transportation, superintendence and other facilities and accessories for **TWELVE (12) 2021 TREADMILLS** designated, defined and described in the Agreement and in accordance with the General Conditions, City of Overland Park Standard Specifications (the "Specifications"), Project Specific Special Provisions, Plans and other Contract Documents therefor; a copy of the Agreement being attached hereto and made a part hereof.

NOW, THEREFORE, if said Contractor shall in all particulars promptly and faithfully perform each and every covenant, condition, and part of the Agreement, and the General Conditions, Specifications, Project Specific Special Provisions, Plans and other Contract Documents thereto attached or by reference made a part thereof, according to the true intent and meaning in each case, upon written acceptance by the City of the improvement herein described in substantial compliance with the Contract Documents and upon the effective date of the Maintenance Bond for the improvement then this obligation shall be and become null and void.

PROVIDED, that said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or the Work to be performed thereunder or the General Conditions, Specifications, Project Specific Special Provisions, Plans and other Contract Documents accompanying same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the Work or to the Specifications, Project Specific Special Provisions, Plans and other Contract Documents.

PROVIDED, FURTHER, that it is expressly agreed that the bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Agreement not increasing the contract price more than 50 percent, so as to bind the Contractor and the Surety to the full and faithful performance of the Agreement so amended. The term "amendment," wherever used in this bond, and whether referring to this bond or the Agreement, shall include any alteration, addition, extension, or modification of any character whatsoever.

Whenever Contractor is declared by City to be in default under the Contract Documents, the Surety may promptly remedy the default or shall within fourteen (14) days from the date of notice from the City:

1. Commence completing the Work of the Agreement in accordance with its terms and conditions. However, Surety may not use the defaulting Contractor, or any legal reformation of the defaulting Contractor, to complete the Work and the Surety may not use any of the subcontractors of the defaulting Contractor to complete the Work without the written consent of the City; or
2. Commence the process of obtaining a bid or bids for completing the Work of the Agreement in accordance with its terms and conditions, and upon determination by the City and the surety jointly of the lowest and best responsive, responsible bidder, arrange for an Agreement between such bidder and the City, and make available as work progresses sufficient funds to pay the cost of completion less the balance of the Contract Price, including other costs and damages for which the surety may be liable hereunder, which sum shall not exceed the amount set forth in the first paragraph hereof. The term "balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by City to Contractor under the Agreement and any amendments thereto, less the amount properly paid by City to Contractor. No right of action shall accrue on this bond to or for the use of any person or corporation other than the City or successors of the City.

IN TESTIMONY WHEREOF, said Contractor has hereunto set his/her hand, and said surety has caused these presents to be executed in its name; and its corporate seal to be hereunto affixed by its attorney-in-fact duly authorized thereunto so to do at _____,

_____ on this, the _____ day of _____, 20____.

Contractor/Principal

ATTEST:

By _____ (SEAL)

Secretary

Title

Surety Company

By _____ (SEAL)
Attorney-in-Fact

NOTE:

1. Date of bond must not be prior to date of contract.
2. If Contractor is partnership, all partners should execute bond.
3. Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state of Kansas.
4. Accompany this bond with Attorney-in-Fact's Authority from the surety company certified to include the date of the bond.

CITY OF OVERLAND PARK, KANSAS
LABOR AND MATERIAL PAYMENT BOND

Project Name (Project Number)

KNOW ALL MEN BY THESE PRESENTS, that we _____
_____ as Contractor and principal, and _____
_____, a corporation organized under the laws of the
State of _____ and authorized to transact business in the State of Kansas, as surety,
are held and firmly bound unto the City of Overland Park, Kansas in the penal sum of _____

_____ Dollars (\$ _____) lawful money of the United States of America, for the payment of
which sum well and truly to be made, we bind ourselves, and our heirs, executors, administrators,
successors, and assigns, jointly and severally, firmly by these presents:

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the said Contractor has on the _____ day of _____, 20____, entered into an
Agreement with the aforesaid City for furnishing in a good, substantial and workmanlike manner all
construction, labor, materials, equipment, tools, transportation, superintendence and other facilities
and accessories for Project Name (Project Number)
designated, defined and described in the Agreement and in accordance with the Contract
Documents to include the General Conditions, City of Overland Park Standard Specifications (the
"Specifications"), Project Specific Special Provisions, Plans and other Contract Documents therefor;
a copy of the Agreement being attached hereto and made a part hereof.

NOW, THEREFORE, if the Contractor or the subcontractors of the Contractor shall pay all
indebtedness incurred for supplies, materials, transportation or labor furnished, or equipment used
or consumed in connection with or in or about the construction or making of the improvements
described in the above-mentioned Contract Documents, then this obligation shall be void; otherwise,
it shall remain in full force and effect.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time,
alteration or addition to the terms of the Agreement and the Contract Documents to the work to be
performed thereunder, or the Plans and Specifications accompanying the same, shall in any way
affect its obligation on this bond, and it does hereby waive notice of any such change, extension of
time, alteration or addition to the terms of the Agreement, Contract Documents or to the Plans and
Specifications.

PROVIDED, that it is expressly agreed that this bond shall be deemed amended automatically and
immediately, without formal and separate amendments hereto, upon amendment to the Agreement
not increasing the contract price more than 50 percent, so as to bind the Contractor and the Surety
to the full and faithful performance of the Agreement as so amended. The term "amendment,"
wherever used in this bond and whether referring to this bond or the Agreement shall include any
alteration, addition, extension or modification of any character whatsoever.

IN TESTIMONY WHEREOF, the said Contractor has hereunto set his/her hand, and the said surety has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed, by its attorney-in-fact duly authorized thereunto so to do, at _____
_____ on this, the _____ day of _____, 20____.

ATTEST:

Secretary

Contractor/Principal

By _____(SEAL)

Surety Company

By _____(SEAL)
Attorney-in-Fact

NOTE:

1. A Labor and Material Payment Bond is required only in connection with a Contract which does not exceed one hundred thousand dollars (\$100,000.00).
2. Date on bond must not be prior to date of contract.
3. If Contractor is partnership, all partners should execute bond.
4. Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state of Kansas.
5. Accompany this bond with Attorney-in-Fact's Authority from the surety company certified to include the date of the bond.

This form **must be complete** and accompanied by **the correct filing fee** or the document will **not** be accepted for filing.

THIS SPACE FOR OFFICE USE ONLY.

1. Individual/entity name

2. Appointing authority's mailing address

Must be a street, rural route, or highway. A P.O. box is unacceptable.

Address

City

State

Zip

Country

3. State of formation

Complete if appointing authority is an entity.

4. Name of service agent

Must be a Kansas resident.

5. Service agent address

Must be a street, rural route, or highway in Kansas. A P.O. box is unacceptable.

Address

City

State
KS

Zip

Country

6. The following section must be completed in the presence of a notary public.

Signature of Individual Authorized by Appointing Agent in Question 1

X

Month Day Year

Name of Signer (printed or typed)

Phone Number

Acknowledged before me by

Day Month Year
on this of

Signature of Notary

X

Month Day Year

My appointment or commission expires

State

County

AFFIX NOTARY'S SEAL HERE.

ASA
51-15

KANSAS SECRETARY OF STATE
Appointment of Service Agent
Instructions

The following form **must be complete** and accompanied by **the correct filing fee** or the document will **not** be accepted for filing.

Kansas Office of the Secretary of State:

Memorial Hall, 1st Floor (785) 296-4564
120 S.W. 10th Avenue kssos@sos.ks.gov
Topeka, KS 66612-1594 www.sos.ks.gov

<input type="checkbox"/> Filing fee	Please submit this form, properly notarized, with the \$35 filing fee.
<input type="checkbox"/> Payment	Please enclose a check or money order payable to the Secretary of State. Forms received without the appropriate fee will not be accepted for filing. Please do not send cash. NOTICE: There is a \$25 service fee for all checks returned by your financial institution. Also, to expedite processing, please do not use staples on your documents or to attach checks.
<input type="checkbox"/> Expiration	This appointment expires three years from date of filing.
<input type="checkbox"/> Foreign entities	Nonresident contractors under K.S.A. 16-113 who are foreign corporations, foreign limited partnerships, or foreign limited liability companies qualified to do business and in good standing in Kansas are not required to file this form.

TWELVE (12) 2021 TREADMILLS

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GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

GC-1 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established with the City by the Contract, and covenants with the City to furnish the Contractor's reasonable skill and judgment and to cooperate with the City and Consulting Engineer in furthering the interests of the City. The Contract Documents shall not be construed to create a contractual relationship of any kind (a) between Contractor's Subcontractors and the City, or (b) between any persons or entities other than the City and the Contractor, including but not limited to the Consulting Engineer and any other Consulting Engineer retained by the City to prepare or review the Work, nor shall anything contained in the Contract Documents create any obligation on the part of the City to pay to or to see to the payment of any sums due any Subcontractor or supplier. It is understood that the Work shall be carried out and the Work shall be constructed fully in accordance with the Contract Documents.

GC-2 CONTRACT DOCUMENTS

2.1 The "Contract Documents" shall consist of the Agreement between the City and Contractor (sometimes referred to herein as the "Agreement"), these General Conditions, the Specifications, all addenda issued prior to and all modifications issued after execution of the Contract (modifications consisting of written amendments to the Contract signed by both parties, Change Orders, written interpretations issued by the Engineer ("Consulting Engineer"), written orders for minor changes in the Work issued by the Consulting Engineer and changes in the Work as authorized by this Contract), drawings and data which may be furnished by the Contractor and approved by the City, additional drawings which may be furnished by the Consulting Engineer which the Consulting Engineer deems necessary to make clear the intent of the Contract Documents (and, in particular, the Specifications), and the Bidding Documents. It is understood that the Work shall be carried out and the Project shall be constructed fully in accordance with the Contract Documents.

2.2 It is expressly understood and agreed that the bound volume of Contract Documents, any plans, schedules and other drawings herein referred to, and data which may be furnished by the Consulting Engineer as are necessary to make clear the intent of the Specifications and Plans, are each and all included in this Contract and the Work shall be done fully in accordance therewith.

2.3 If there is any conflict or discrepancy between the Agreement, Project Specific Special Provisions, Specifications and General Conditions, the following order of precedence shall apply:

1. Agreement;
2. Specifications;
6. General Conditions

2.4 The Contract Documents as enumerated herein form the Contract for construction. The Contract may not be amended or modified except by a modification as hereinabove defined. These Contract Documents do not, nor shall they be construed to, create any contractual relationship of any kind between the City and any Subcontractor or remote tier Subcontractor.

GC-3 DEFINITIONS

Whenever any word or expression defined herein, or pronoun used in its stead, occurs in these Contract Documents, it shall have and is mutually understood to have the meaning herein given. Work described in words which so applied have a well-known technical or trade meaning shall be held to refer to such recognized standards.

3.1 "Acceptance" means agreement by the City to put the Work into use, but no acceptance by the City shall, at any time, constitute approval or acceptance of Work that is not

in accordance with the terms of this Contract or the Contract Documents, unless such acceptance is specifically described in writing as applying to Work that is not in accordance with this Contract or the Contract Documents.

3.2 "Applicable Laws" means all laws, statutes, ordinances, codes, regulations, rules, orders and resolutions of all national, administrative, state, local, municipal, and other governing bodies relating to the Project or to the performance of the Work.

3.3 "Application for Payment" means a written request for compensation for Work performed submitted per City-approved form.

3.4 "Approve" shall mean review by the City, which may be given solely for the benefit of the City but no approval by the City shall, at any time, constitute approval or acceptance of Work that is not in accordance with the terms of this Contract or the Contract Documents.

3.5 "Bid" shall mean the offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed (and the City reserves the right to reject any and all bids).

3.6 "Bidder" shall mean any individual, partnership, corporation, association or other entity submitting a Bid for the Work.

3.7 "Bidding Documents" shall mean all documents related to a Bidder's submitting a Bid, including, but not limited to, the advertisement for Bids, if applicable, Instructions to Bidders, the Bid form, other sample bidding and contract forms and the proposed Contract Documents, including any addenda issued prior to receipt of Bids. At the City's option, Bidders may be required to complete and submit a prequalification statement.

3.8 "Bonds" shall mean the Bid, Performance, Maintenance and Statutory Labor and Material Payment Bond, together with such other instruments of security as may be required by the Contract Documents.

3.9 "Change Order" is a written order issued after the Agreement is executed by which the City, the Consulting Engineer and the Contractor agree to construct additional items of work, to modify the Contract Time, or, to change the character and scope of Work shown on the Contract Documents, or as otherwise provided in this Contract. Change Orders must be signed by the City and the Contractor to be binding.

3.10 "City" shall mean the City of Overland Park, Kansas.

3.11 "City Engineer" shall mean City Engineer or his/her duly authorized designee.

3.12 "Construction Documents" means documents prepared by the Consulting Engineer or other design professionals working under the supervision of Consulting Engineer for construction of the Work, including but not limited to the Plans and Specifications.

3.13 "Consulting Engineer" shall mean such persons or firms retained or employed by the City who shall perform the duties described in the Contract as delegated to the Consulting Engineer. Unless the City acts as its own consultant, the Consulting Engineer is an independent contractor.

3.14 "Contract Documents" shall have the meaning ascribed to it in Article GC-2, such terms sometimes may be used interchangeably with "Contract".

3.15 "Contract Price" shall be the amount identified in the Agreement between City and Contractor as the total amount due Contractor for total completion of the Work as per the Contract Documents. Where the Contract provides that all or a part of the Work is to be Unit Price Work the Contract Price shall initially be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work multiplied by the estimated quantity of each item required for the Work. It is understood and agreed that estimated quantities of items for Unit Price Work are not guaranteed and are solely for the purpose of comparison of bids and determining an initial Contract Price. Determinations of actual quantities and classifications of Unit Price Work shall be made by the Consulting Engineer. Each unit price shall be deemed to include Contractor's overhead and profit for each separately identified item.

3.16 "Contract Time" shall be the number of calendar days stated in the Contract Documents for the completion of the Work or shall be a date certain if so designated in the Contract Documents.

3.17 "Contractor" shall mean the entity entering into the Contract for the performance of the Work covered by this Contract, together with its duly authorized agents or legal representatives. (For purposes of indemnification, see GC-34 for definition of "Contractor".)

3.18 "Defective Work" shall mean Work which is unsatisfactory, faulty or deficient, or not in conformity with the Contract Documents. It shall also include Work damaged prior to approval of final payment unless responsibility for such damage shall have been expressly assumed by the City at final completion.

3.19 "Effective Date of the Agreement" shall mean the date indicated in the Agreement on which the Contract becomes effective, but, if no such date is indicated, it shall mean the date on which the Agreement is signed and delivered by the City to the Contractor. For this purpose, delivery shall be accomplished by either hand-delivery to the Contractor or placing a copy in the mail, first class, postage prepaid.

3.20 "Field Order" shall mean a written order issued by the Consulting Engineer which orders minor changes in the Work in accordance with Article GC-26 but which does not involve a change in the Contract Price or Contract Time.

3.21 "Final Acceptance" shall mean the date when the Consulting Engineer accepts in writing that the construction of the Project is complete in accordance with the Contract Documents such that the entire project can be utilized for the purposes for which it is intended and Contractor is entitled to final payment.

3.22 "Inspector" shall mean the engineering or technical inspector or inspectors duly authorized by the Consulting Engineer or the City.

3.23 "Notice of Award" shall mean the written notice by the City to the apparent successful Bidder stating that upon compliance with the conditions precedent enumerated therein, within the time specified, the City will sign and deliver the Agreement.

3.24 "Notice to Proceed" shall mean the written notice by the City to the Contractor fixing the date on which the Contract Time is to commence and on which the Contractor shall start to perform its obligations under the Contract Documents. Without the prior express written consent of the City, Contractor shall do no Work until the date set forth in the Notice to Proceed.

3.25 "Partial Utilization" shall mean placing a portion of the Work to be provided under the Contract Documents to the use intended by the City.

3.26 "Pay Estimate No. _____" or "Final Pay Estimate" shall mean the form to be used by the Contractor in requesting progress and final payments, including supporting documentation required by the Contract Documents.

3.27 "Plans" or "the Plans" shall mean and include all drawings which may have been prepared by the City and/or the Consulting Engineer on the City's behalf as a basis for Bids, all drawings (other than Shop Drawings, as defined, below.) submitted by the successful Bidder with its Bid or by the Contractor to the City, if and when approved by the Consulting Engineer, and all drawings submitted by the City to the Contractor during the progress of the Work, all of which show the character and scope of the Work to be performed.

3.28 "Project" shall mean the overall construction program of the City, which may include work by contractors other than the Contractor.

3.29 "Project Specific Special Provisions" shall mean any special directions or project specific requirements that are not otherwise stated explicitly in the Specifications.

3.30 "Shop Drawings" shall mean all drawings, diagrams, illustrations, schedules and other data which are specifically prepared by the Contractor, a Subcontractor, manufacturer, fabricator, supplier or distributor to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a manufacturer, fabricator, supplier or distributor and submitted by the Contractor to illustrate material or equipment for some portion of the Work.

3.31 "Specifications" shall mean written technical descriptions of materials, equipment, construction methods, standards and workmanship as applied to the Work and certain administrative details applicable thereto. They may include, but not necessarily be limited to:

3.31.1 design specifications, e.g. measurements, tolerances, materials, inspection requirements and other information relative to the Work;

3.31.2 performance specifications, e.g., performance characteristics required, if any;

3.31.3 purchase description specifications, e.g. products or equipment required by manufacturer, trade name and/or type; provided, however, equivalent alternatives (including aesthetics, warranty and manufacturer reputation) may be substituted upon written request and written approval therefore by the City in accordance with Article GC-61;

3.31.4 such other information deemed appropriate by the City for inclusion in the Specifications for the proper construction of the Project.

3.32 "Subcontractor" shall mean an individual, firm or corporation having a direct contract with the Contractor or with another Subcontractor for the performance or supply of any part of the Work required by the Contract Documents.

3.33 "Unit Price Work" shall mean Work to be paid for on the basis of unit prices, where the parties acknowledge that final units may vary from those indicated in the bid documents, and pricing may be adjusted accordingly under the terms of this Contract.

3.34 "Utilities" shall mean all pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or utilities which have been installed above or underground to furnish services or materials including, but not limited to, electricity, gasses, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water, or other related facilities whether above or below ground.

3.35 "The Work" shall mean the work to be done necessary to complete the construction required of the Contractor by the Contract Documents, and includes all construction, labor, materials, tools, equipment and transportation necessary to produce such construction in accordance with the Contract Documents.

3.36 Whenever in these Contract Documents the words "as ordered," "as directed," "as required," "as permitted," "as allowed," or words or phrases of like import are used, it is understood that the order, direction, requirement, permission or allowance of the City and/or the Consulting Engineer is intended.

3.37 Whenever any statement is made in the Contract Documents containing the expression "it is understood and agreed," or an expression of like import, such expression means the mutual understanding and agreement of the parties hereto.

3.38 The words "approved," "reasonable," "suitable," "acceptable," "properly," "satisfactory," or words of like effect in import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the City and/or the Consulting Engineer.

GC-4 DEFECTS IN CONTRACT DOCUMENTS

If Contractor has reasonable cause such that it should, in the exercise of ordinary care of someone in its position, know that any errors, omissions, ambiguities, discrepancies or inconsistencies (hereinafter "defects") appear in the Contract Documents, including, but not limited to, the Plans, Specifications and other documents or the Work, Contractor shall, notify the Consulting Engineer in writing of such defects, and shall not proceed with the affected Work until receiving written clarification from the Consulting Engineer. Upon written request of Contractor, the Consulting Engineer shall furnish, with reasonable promptness, additional instructions by means of drawings, Specifications or other information necessary for the proper execution of the Work. The Work shall be executed in conformity therewith, and, Contractor shall do no Work without proper instructions except at its peril. If the defect was one of which the Contractor knew or with reasonable diligence should have known prior to bidding or prior to proceeding with Work without awaiting instruction by the Consulting Engineer, Contractor shall remedy any such defects without any increase in the cost of the Work. Subcontractors, remote tier Subcontractors and major material suppliers shall, have these same duties, and it shall be

the obligation of the Contractor to remedy same as if Contractor had discovered such defects itself. The Contractor will not be permitted to take advantage of any such defect.

GC-5 BID

The Contractor acknowledges and agrees that the unit prices and/or lump sum prices shown in the Bid contemplate the construction of all facilities, complete, and in conformance with the Plans and Specifications. Any item or items required in construction for which a specific unit price and/or lump sum price is not provided shall be included in the price for the closest applicable items.

GC-6 COPIES OF THE CONTRACT

6.1 Unless otherwise provided in the Contract Documents, City will furnish to Contractor a maximum of three (3) copies of the Contract Documents, free of charge, necessary for the execution of the Work.

6.2 Sufficient copies of the Bidding Documents, Bonds and other Contract Documents between City and Contractor shall be prepared, each containing an exact copy of the Contractor's Bid as submitted, the Bonds properly executed and the Agreement signed by both parties hereto. These executed counterparts shall be filed with the City, Contractor and the surety company executing the Bonds. The original Bid submitted by the Contractor will be retained by the City.

6.3 Contractor shall keep, and make available to City at the Project site, one copy of all Contract Documents for the Work at the Project site, in good order and legibly marked to reflect actual construction. Contractor shall also maintain at the site all approved samples and a print of all approved Shop Drawings. Such Contract Documents, samples and Shop Drawings shall be turned over to the City at the completion of the Work if requested by the City with the exception of one record set for Contractor.

6.4 Contract Documents are the property of the City, and none of the Contract Documents are to be used on other work by Contractor. All models and calculations are the property of City.

GC-7 SCOPE, NATURE AND INTENT OF CONTRACT DOCUMENTS

7.1 The Contract Documents collectively form the Contract. They are complementary (but not necessarily duplicative of each other), and what, if any, Work exhibited in one but not in the other shall be executed just as if it had been set forth in both in order that the Work shall be completed according to the complete design or designs as decided and determined by the Consulting Engineer. The intention of the Contract Documents is to include all construction, labor, materials, tools, equipment and transportation necessary for the workmanlike construction of the Project in accordance with the Contract Documents.

7.2 Should anything be omitted from the Contract Documents which is necessary to a clear understanding of the Work, or should it appear that various instructions are in conflict, or in the event the Contract Documents are silent as to any detail, then it shall be the duty of the Contractor to secure written instructions from the Consulting Engineer before proceeding with the construction affected by such omissions, discrepancies or silence. In accordance with Article GC-4, Contractor's failure to bring any such matter to the attention of the Consulting Engineer shall be at the Contractor's peril, and there shall be no compensation for extra work necessitated thereby.

7.3 Dimensions and elevations shown on the Plans shall be accurately followed, even though they may differ from scaled measurements. No Work shown on the Plans, the dimensions of which are not indicated, shall be executed until the required dimensions have been obtained from the Consulting Engineer. Contractor shall be responsible for verification of all locations, dimensions and elevations in the field (including, but not limited to verification of location of Utilities) and shall verify all field dimensions shown on the Contract Documents.

7.4 All Work performed under this Contract shall be done to the lines, grades, and elevations shown on the Plans. The Contractor shall keep the Consulting Engineer informed, a

reasonable time in advance of the times and places at which it wishes to do Work, in order that lines and grades may be furnished and necessary measurements for record and payment may be made with the minimum of inconvenience and delay to the Consulting Engineer and the Contractor.

7.5 Any Work done without being properly located and established by base lines, offset stakes, bench marks, or other basic reference points may be ordered removed and replaced at the Contractor's cost and expense.

7.6 Contractor, together with its Subcontractors, shall carefully examine the Contract Documents for any interference with the Work and clearances that may be required. Contractor shall be responsible for the proper fitting of materials and equipment without substantial alterations. Contractor shall be responsible for eliminating interferences without additional cost to City. If departures from the Contract Documents are deemed necessary by Contractor, details of such departures and reasons therefore shall be submitted to Consulting Engineer, with drawings (if Consulting Engineer determines that drawings are necessary), for approval as soon as practical. No such departure shall be made except at the peril of the Contractor without the prior written approval of the Consulting Engineer.

GC-8 BEGINNING, PROGRESS AND TIME OF COMPLETION OF WORK

8.1 After being awarded the Contract, the Contractor shall immediately prepare and submit for approval by the City Engineer a construction schedule giving the dates on which it expects to start and to complete separate portions of the Work, which schedule shall be strictly adhered to unless agreed to in writing by all parties or modified by any extension or extensions of time as hereinafter provided. No Work on this Contract shall begin until said schedule is approved. The City reserves the right to adjust the Contractor's schedule to coordinate with any other projects in the same area.

8.2 Construction Schedules

The Contractor shall, within ten (10) days after being instructed to do so in the written "Notice to Proceed" from the City, commence the Work to be done under this Contract, and the rate of progress shall be such that the Work shall have been completed in accordance with the terms of the Contract on or before the termination of the construction period contractually specified, subject to any extension or extensions of time made as hereinafter provided.

The Contractor shall submit monthly progress reports and schedules. The progress report shall summarize Work completed, identify any weather and/or utility delays encountered, and indicate Work anticipated for the upcoming month. The schedule will be detailed indicating how the remaining Work will be completed within the stated deadlines (the remaining Work shall include identifying/incorporating utility relocation work with the project related construction work). The progress report and schedule will be required before payment of monthly pay estimates.

If requested, a weekly construction schedule shall be submitted to the City and approved by the City Engineer. Modifications and/or revisions to the schedule shall have twenty-four hour notice with approval by the City Engineer.

GC-9 SHOP DRAWINGS

9.1 Contractor shall review, approve, and submit, with such promptness as to cause no delay in its own Work or in that of any Subcontractor or other Contractor, three (3) copies of all shop, fabrication, assembly, foundation and other drawings and schedules required by the Specifications, including, but not limited to: (1) drawings of equipment and devices offered by the Contractor for approval of the Consulting Engineer in sufficient detail to adequately show the construction and operation thereof; (2) drawings showing essential details of any change in design of construction proposed by the Contractor, for consideration by the Consulting Engineer, in lieu of the design or arrangement required by the Contract Documents, or any item of extra work there under; (3) all required wiring and piping layouts; and (4) structural and reinforcing fabrication drawings. All submittals, regardless of origin, shall be stamped with the

approval of the Contractor and identified with the name and number of this Contract, Contractor's name and references to applicable specification paragraphs and Contract drawings. Each submittal shall indicate the intended use of the item in the Work. Contractor's stamp of approval is representation to the Consulting Engineer, that the Contractor accepts full responsibility for determining and verifying all quantities, dimensions, field construction criteria, materials, and similar data, and that he has reviewed or coordinated each submittal with the requirements of the Work and the Contract Documents. All deviations from the Contract Documents shall be identified on each submittal and shall be tabulated in the Contractor's letter of transmittal. Such submittals shall, as pertinent to the deviation, indicate essential details of all changes proposed by Contractor (including modifications to other facilities that may be a result of each deviation).

9.2 The Consulting Engineer shall review the Shop Drawings for conformance with the design concept of the Work and information as given in the Contract Documents. No Work shall be performed in connection with the fabrication or manufacture of material or equipment shown by any drawing thereof, nor shall any accessory, appurtenance or device not fabricated or manufactured by the Contractor or its Subcontractors be purchased, until the drawing or drawings therefore have been approved as stipulated, except at the Contractor's own risk and responsibility. The Contractor is not relieved of responsibility for any deviation from the requirements of the Contract Documents by the Consulting Engineer's approval of the Shop Drawings, product data, or samples. The Contractor is not relieved from responsibility for errors or omissions in Shop Drawings by the Engineer's approval thereof. The Consulting Engineer shall respond to, accept or reject such submissions within a reasonable time after receipt thereof. Contractor shall make such revisions as deemed necessary. Prior to and as a condition of Final Acceptance, the Consulting Engineer shall be furnished with a copy of each drawing as finally approved, such number to include any copies of preliminary or revised drawings which are approved as submitted.

GC-10 CONTRACTOR'S RESPONSIBILITIES AS TO AMBIGUITIES

If there is any ambiguity in Consulting Engineer's drawings or instructions, Contractor shall ask the Consulting Engineer for clarification. Nothing herein to the contrary shall affect Contractor's responsibilities with regard to defects as set forth in Article GC-4.

GC-11 CONCEALED CONDITIONS

The Contractor understands that there may be some variances from materials and information provided by the City, including, for example, soil tests, bore reports, utility locations and other such data and as-builts in the case of renovation of or addition to existing facilities, reflect actual conditions. The Contractor warrants that it has examined the site and conducted such tests and examinations as it deems necessary to verify any such information that pertains to its Work. That being the case, should concealed conditions encountered in the performance of the Work below the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents, or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract, be encountered, there shall be no adjustment in the Contract Price for any extra work necessitated thereby, although, if necessary, the Contract Time may be adjusted.

GC-12 CONTRACTOR TO FURNISH STAKES AND HELP

The Contractor, unless otherwise instructed, shall stake the Work and shall furnish, without charge, competent people from its force and such tools, stakes, and other materials as required in properly staking out the Work, in making measurements and surveys and in establishing temporary or permanent reference marks in connection with said Work. The stakes furnished for the staking of the Work shall be of such type, size and quality as to be acceptable to the Consulting Engineer.

GC-13 PRESERVATION OF MONUMENTS AND STAKES

The Contractor shall carefully preserve all monuments, property corners, bench marks, reference points and stakes, and in case of destruction of the same, will be responsible for proper replacement and for any mistakes or loss of time that may be caused by their unnecessary loss or disturbance. In the event that the loss of stakes, etc., causes a delay in the Work, the Contractor shall have no claim for damages or extensions of time. In the case of any permanent monuments, property corners or bench marks which must of necessity be removed or disturbed in the construction of the Work, the Contractor shall carefully protect and preserve the same until they can be properly referenced for relocation. The Contractor shall furnish at its own expense such materials, surveyors and assistance as are necessary for the proper replacement of monuments, property corners or bench marks that have been moved or destroyed.

GC-14 PERMITS AND NOTICES

14.1 All permits and licenses shall be secured and paid for by Contractor, unless otherwise specified.

14.2 Contractor shall give all notices required by and all Work shall be done in accordance with all applicable federal and state laws, City and County laws and ordinances, building codes and rules and regulations bearing on the conduct of the Work.

14.3 Contractor shall notify all affected utility companies of the Work and coordinate with those companies to avoid interruption of service and damage to lines and property. This notice requirement shall also apply as to the owner/operator of any affected Utilities. Any project delay, damages or increase in construction costs due to utility relocation delays shall be at the Contractor's risk.

14.4 Contractor shall give reasonable notice to all owners or occupants of property which is potentially susceptible to damage through the performance of the Work and shall make all necessary arrangements with such owners or occupants relative to the removal and replacement or protection of such property or Utilities.

GC-15 GENERAL ADMINISTRATION OF THE CONTRACT

15.1 Unless otherwise stipulated, Contractor shall provide and initially pay for all Work (including labor, transportation, tools, equipment, machinery, plant and appliances) necessary in producing the results called for by the Contract Documents.

15.2 The Contractor shall be solely responsible for and have complete control and charge of construction means, methods, techniques, sequences and procedures, and for safety precautions and programs in connection with the Work. The City shall not be responsible for nor have control or charge over the acts or omissions of the Contractor, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

15.3 The Contractor shall, in addition to the schedule required by Article GC-8, give to the Consulting Engineer full information in advance as to its plans for carrying on any part of the Work. If at any time before the beginning or during the progress of the Work, any part of the Contractor's plant or equipment or any of its methods of executing the Work, appear to the Consulting Engineer to be unsafe, inefficient or inadequate to ensure the required quality or rate of progress of the Work, the Consulting Engineer may order the Contractor to increase or improve its facilities or methods, and the Contractor shall promptly comply with such orders; but neither compliance with such orders nor failure of the Consulting Engineer to issue such orders shall relieve the Contractor from its obligation to secure the degree of safety, the quality of Work and the rate of progress required by the Contract.

15.4 The approval by the Consulting Engineer of any plan, schedule or method of work proposed by the Contractor shall not relieve the Contractor of any responsibility therefore, and such approval shall not be considered as an assumption by the City, or any officer, agent or employee thereof, of any risk or liability, and the Contractor shall have no claim under this Contract on account of the failure or inefficiency of any plan or method so approved. Such approval shall be considered and shall mean that the Consulting Engineer has no objection to

the Contractor's use or adoption, at the Contractor's own risk and responsibility, of the plan or method so proposed by the Contractor.

15.5 Any plan or method of Work suggested by the Consulting Engineer or the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Consulting Engineer and the City will assume no responsibility therefor.

GC-16 CONTRACTOR'S EMPLOYEES

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

16.2 Contractor shall be responsible for compliance with all state and federal laws, if applicable, pertaining to wages, hours and benefits for workers employed to carry out the Work.

16.3 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 or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

GC-17 SAMPLES

Contractor shall furnish for approval samples if directed by the Consulting Engineer or the Contract Documents. The Work shall be in accordance with approved samples.

GC-18 PROTECTION AND MAINTENANCE OF PUBLIC AND PRIVATE PROPERTY; LIABILITY

18.1 Contractor shall be solely liable for all damages to the City or the property of the City, to other contractors or other employees of the City, to neighboring premises, or to any private or personal property, due to improper, illegal or negligent conduct of the Contractor, its Subcontractors, employees or agents in and about said Work, or in the execution of the Work. The Contractor shall be liable to the City for any damages, whether property damage or personal injury, occasioned by Contractor's use of any scaffolding, shoring, apparatus, ways, works, machinery, plant or any other process or thing that is required for the Work. Utilities, damaged by the Contractor within or outside the right-of-way shall be restored at the Contractor's expense and at no cost to the City. The Contractor shall make every effort to locate these lines and protect them.

18.2 Without in any manner limiting Contractor's responsibilities as provided elsewhere in the Contract Documents, the Contractor shall maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards, and assume full responsibility, for the protection of all public and private property, life, the Work, supplies, materials and equipment on the Project site not yet incorporated in the Work, structures, sewers and Utilities, along, beneath, above, across or near the site or sites of the Work being performed under this Contract, or which are in any manner affected by the prosecution of the Work or the transportation of people or materials in connection therewith.

18.3 Protection may include, shoring, bracing, supporting and maintaining all underground pipes, conduits, drains and other underground construction uncovered or otherwise affected by the construction Work performed by Contractor. Barriers shall be kept placed at all times to protect bracing and shoring of the trenches shall be in full accordance with Occupational Safety and Health Standards – Excavations; Final Rule 29 CFR Part 1926. All open trenches and other excavations shall be provided with suitable barriers, signs and lights, at Contractor's expense, such that adequate protection is provided to the public against accident by reason of such open construction. Obstructions such as material piles and equipment shall be provided with similar warning lights and signs. All pavement, surfaces, driveways, curbs, walks, buildings, utility poles, guy wires, and other surface structures affected by construction operations in connection with the performance of the Contract, shall be maintained, and if

removed or otherwise damaged, shall be restored to the original condition thereof, as determined and approved by the Consulting Engineer. All replacement of such underground construction and surface structures or parts thereof shall be made with new materials conforming to the requirements of the Specifications, or if not specified, as approved by the Engineer, at the Contractor's own expense, unless otherwise provided by the Contract.

18.4 Barriers shall be kept placed at all times to protect other than those engaged on or about the Work from accident and the Contractor shall be held responsible for all accidents to persons or property resulting from the acts of Contractor or its employees. Contractor shall give reasonable notice to any affected owner or owners when any property is liable to injury or damage through the performance of the Work and shall make all necessary arrangements with such owner or owners relative to the removal and replacement or protection of such property and/or Utilities.

18.5 Contractor shall post danger signs warning against the hazards created by such features of construction as protruding nails, hood hoists, well holes, elevator hatchways, scaffolding, window openings, stairways, falling materials, open trenches, other excavations, obstructions and similar conditions. It shall designate a responsible member of its organization on the Project whose duty shall be the prevention of accidents. The name and position of the person so designated shall be reported to the Consulting Engineer by Contractor.

18.6 Contractor shall be responsible for any damage caused by settlement of backfill placed beneath pavement, street, road, and driveway surfacing, and drainage and other structures beneath yards, parking and parks, which may occur at any time prior to and during a period of two (2) years from and after the date of Final Acceptance of Work covered by the Contract; during such period, the Contractor shall at its own expense, refill all excavations where backfill settlement has occurred and shall repair or cause to be repaired all damage to structures, pavements, surfacing and sod caused by such settlement, to the satisfaction of the City. Should the Contractor fail to repair settlements which may occur as described above within thirty (30) days after being given notice thereof, the City shall have the right to repair such settlement and charge the cost of such repairs to the Contractor.

18.7 Contractor shall be held responsible for all damage to roads, highways, shoulders, ditches, embankments, bridges, culverts, poles, cabinets, and other property, caused by the Contractor or any of the Contractor's Subcontractors in hauling or otherwise transporting materials to or from the several sites of Work, regardless of the location of such damage. Contractor shall make arrangements relative to the payment for, or repair or replacement of, such damage or damaged surfaces of structures; said arrangements shall be satisfactory and acceptable to the owner or owners of such damaged surfaces or structures, or to their legally responsible officers, agents or other representatives, and said payment shall be at the Contractor's own cost and expense, unless otherwise provided by the Contract.

18.8 All streets, roads, highways and other public thoroughfares which are closed to traffic, under the authority of a proper permit, shall be protected, at Contractor's expense, by means of effective barricades on which shall be placed proper warning signs; such barricades being located at the nearest intersecting public highway or street on each side of the blocked section of such public thoroughfare, or as approved by the City Engineer.

18.9 Materials stored upon or alongside public streets and highways shall be so placed, and the Work at all times shall be so conducted, as to cause the minimum obstruction and inconvenience to the traveling public.

18.10 All barricades, signs, lights and other protective devices in public rights-of-way shall be installed and maintained in conformity with applicable statutory requirements and as required by the Manual on Uniform Traffic Control Devices, as amended, or any other applicable statutes or ordinances.

GC-19 WORK IN OR ACROSS STREET OR HIGHWAY RIGHT-OF-WAY

All Work performed and all preparations of the Contractor or its employees, and Subcontractors, if any, within the limits of street or highway rights-of-way shall be in conformity with the requirements, and be under the control, through the City, of the street or highway

authority owning or having jurisdiction and control over such rights-of-way in each case. Any costs incurred to comply with such requirements are the responsibility of Contractor.

GC-20 MAINTENANCE OF TRAFFIC

20.1 Local traffic on all streets shall be carried through construction whenever possible. Detours of traffic will be permitted when necessary and with the prior permission of the City. Streets may be closed for short periods of time under authority of proper permit issued by the City or authority having jurisdiction. However, the Contractor shall conduct its Work so as to interfere as little as possible with public travel, whether vehicular or pedestrian, on such streets. Proper notification to County and City police units and to Fire Districts shall be given by the Contractor before closing any public thoroughfare.

20.2 Where construction operations require the closing of private driveways, the Contractor shall give adequate notice to the owner or owners thereof and where necessary shall provide temporary access to private property.

GC-21 NOISE CONTROL

Contractor shall take reasonable measures to avoid unnecessary noise. Such measures shall be appropriate for the normal ambient sound levels in the area during working hours. All construction machinery and vehicles shall be equipped with practical sound muffling devices, and operated in a manner to cause the least noise consistent with efficient performance of the Work. Contractor shall comply with any local, state or federal noise regulations.

GC-22 DUST CONTROL

Adequate precaution shall be taken to insure that excessive dust does not become airborne during construction. The Contractor shall comply with any local, state, or federal regulations which apply to this matter in the geographical area of the Work. No separate payment will be made for performing dust control or for applying water for this purpose. Additional measures may be required at the direction of the City Engineer.

GC-23 INSPECTION OF WORK

23.1 The City and the Consulting Engineer shall at all times have access to the Work for the observation and inspection thereof wherever it is in preparation or progress, and Contractor shall provide proper facilities for such inspection. The Contractor shall furnish all reasonable aid and assistance required for any such inspection.

23.2 All Work must be inspected, tested or approved and the Contractor shall give the City and the Consulting Engineer timely notice of its readiness for such inspection, testing or approval and the date fixed for such inspection, testing or approval, if the inspection, testing or approval is by an authority other than the City or its Consulting Engineer. If any Work should be covered up which is required by the above to be inspected, tested or approved and which, by virtue of being so covered up, is not susceptible to being properly inspected, tested or approved, Contractor shall, if requested by the City or its Consulting Engineer, uncover such Work and at Contractor's expense bear the cost of uncovering such Work and redoing same after inspection, testing or approval and redoing such other Work damaged as a result of having to uncover and redo same.

23.3 The City reserves the right to inspect any and all Work before it is covered up; and, accordingly, Contractor must notify the City, through the Consulting Engineer before covering any Work. The City and its Consulting Engineer shall be given a reasonable time to make its inspection. Contractor shall not cover any Work prior to the City and/or its Consulting Engineer having a reasonable time to inspect. If Work to be covered does not conform to the Contract Documents, the City can withhold its consent to covering up Work until such Work is made to conform at Contractor's expense.

23.4 If any labor, supplies, materials or equipment are found not to be in accordance with the Contract Documents, Contractor shall at its own expense bear the cost of uncovering such labor, supplies, materials or equipment, the cost of removing same, as well as the cost of

undoing and redoing the Work and other Work damaged by such nonconforming labor, supplies, materials or equipment.

23.5 The Contractor shall comply with the directions and instructions of the City or the Consulting Engineer.

23.6 The City, the Consulting Engineer and all designated Inspectors shall be free at all times to perform their duties, including the observation and inspection of the Work, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees shall be sufficient reason, if the City so desires, to terminate the Contract.

23.7 Any inspection, by whosoever conducted, shall not relieve the Contractor from any obligation to perform the Work strictly in accordance with the Plans and Specifications, and any of the Work not so constructed shall be removed and made good by the Contractor at its own expense.

GC-24 SUPERINTENDENCE AND SUPERVISION

24.1 The Contractor shall be responsible for coordination between all phases of the Work and provide all necessary supervision to the Work using its best skill, care, judgment and attention and shall keep on the Work, during its progress, a competent superintendent and any necessary assistants, all satisfactory to the City and its Consulting Engineer. The Contractor shall coordinate the activities and scheduling of all operations in accordance with the approved schedule. All unsupervised Work shall be unacceptable and subject to removal and replacement at the Contractor's expense. The superintendent shall not be changed except with the consent of the City unless the superintendent proves to be unsatisfactory to the Contractor and/or ceases to be in its employ; provided however, that the City retains the right to require that the Contractor replace the superintendent at any time, such right not to be arbitrarily exercised.

24.2 The superintendent shall be fully authorized to act for the Contractor and receive whatever orders as may be given for the proper prosecution of the Work or notices in connection therewith. The superintendent shall be available to communicate with the City at all reasonable times, and the Contractor shall give the City any contact information that is requested by the City. The superintendent shall speak such languages as are necessary to be able to effectively communicate with all of the Contractor's employees and Subcontractors.

24.3 Use of Subcontractors on portions of the Work shall not relieve the Contractor of its obligation to have a competent superintendent directly employed by the Contractor on the Work at all times.

GC-25 CONTRACTOR'S OFFICE AT SITE OF WORK

During the performance of this Contract, the Contractor shall maintain a suitable office at or near the site of the Work which shall be the headquarters of the superintendent authorized to receive drawings, instructions, or other communications or articles from the Consulting Engineer, and any such communication given to the said superintendent or delivered at the Contractor's office at the site of the Work in his/her absence shall be deemed to have been given to the Contractor.

GC-26 CHANGES IN THE WORK

26.1 Change Orders. City, without invalidating the Contract, may by Change Order direct changes in the Work which may result in an addition to or deduction from the Contract Price and/or changes in the Contract Time. All Change Orders shall be executed under the provisions of the original Contract Documents. If the Change Order consists of a modification to the Contract Price, the value of such change shall be determined as per paragraph 26.5 below.

Except for Work done as a result of an emergency endangering life or property, no Work resulting in an additional pay item shall be performed unless pursuant to the provisions of a Change Order.

26.2 Quantity Variations. Where changes in the Work involve a change in the quantity of any Bid item, the Contract Price shall be revised by extension of the quantities and unit price of all Bid items so changed subject to written approval of the Consulting Engineer.

26.3 Field Orders. Consulting Engineer may order minor changes in the Work through Field Orders, which in no specific, concrete or substantial way increase or decrease the Work; and such minor changes in the Work shall not involve an addition or deduction from the Contract Price.

26.4 The value of any change in the Work which results in an addition/deletion to the Contract Price shall be determined in one or more of the following ways, at the option of City:

26.4.1 By agreed lump sum.

26.4.2 By unit prices named in the Contract or subsequently agreed upon.

26.4.3 By actual field cost (time and material) plus a maximum of fifteen percent (15%) total markup including all tiers and shall include a "Not to Exceed" figure.

In order to arrive at the value for any change, Contractor shall credit City with its projected cost(s), including overhead and fee for any Work which was previously included but which has been excluded by any such change.

26.5 No change in the Work shall entail additional time unless the Consulting Engineer determines that additional time is required and specifically so provides in the Change Order.

26.6 Where extra work is performed under 26.4.3 above, the term "actual field cost" of such extra work is hereby defined to be and shall include:

26.6.1 The cost of all workers, such as foremen, timekeepers, mechanics, and laborers, for the time actually employed in the performance of the said extra work;

26.6.2 All materials and supplies;

26.6.3 Trucks and rentals on machinery and equipment for the time actually employed or used in the performance of said extra work. Unless otherwise stated in the Contract Documents, rates and quantities of equipment furnished by Contractor or any subcontractor shall be provided prior to the start of the Work and be approved by the City. Rate to be paid will be the monthly rate set forth in the Blue Book. The Blue Book rate is calculated by dividing the monthly rate for the equipment by 176 and adjusting that rate by Blue Book age and regional adjustment factors before adding the Blue Book estimated hourly operating cost. The hourly operating cost includes costs for repairs, fuel and lubricants used or consumed in the Work;

26.6.4 Any transportation charges necessarily incurred in connection with said equipment authorized by the City for use on said Work and similar operating expenses;

26.6.5 All incidental expenses incurred as a direct result of such extra work, including payroll taxes and a ratable proportion of premiums on construction Bonds and, where the premiums therefore are based on payroll costs, public liability and property damage, worker's compensation, and other insurance required by the Contract; provided, however, Contractor must enumerate and justify to City's satisfaction any such claimed incidental expenses; and provided, further, that without in any way limiting City's right to challenge any individual costs claimed by Contractor, incidental costs shall not include:

26.6.5.1 Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the site or in Contractor's principal or a branch office for general administration of the Work unless specifically agreed to by City - all of which are to be considered administrative costs covered by the Contractor's overhead and profit.

26.6.5.2 Expenses of Contractor's principal and branch offices other than Contractor's office at the site.

26.6.5.3 Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

26.6.5.4 Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of Defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

26.6.5.5 Other overhead of general expense costs of any kind and the costs of any item not specifically and expressly agreed to by City.

The Consulting Engineer may direct the form in which accounts of the actual field cost shall be kept and may also specify in writing, before the Work commences, the method of doing the Work and the type and kind of machinery and equipment, if required, which shall be used in the performance of extra work under 26.6.3 above. In the event that machinery and heavy construction equipment shall be required for such extra work, the authorization and basis of payment for the use thereof shall be stipulated in the written extra work order.

The fifteen percent (15%) above actual field cost to be paid to the Contractor shall cover, and be full compensation for the Contractor's and subcontractors' profit, overhead, general superintendence, field office expense and all other elements of cost not embraced within the "actual field cost" as herein defined.

26.7 In the event that unit prices are provided for in the Contract Documents as to all or a part of the Work, if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed is substantially inequitable to either the City or the Contractor, the unit prices shall be reevaluated and adjusted in accordance with the following:

26.7.1 If the total cost of a particular item of Unit Price Work amounts to twenty percent (20%) or more of the Contract price and the variation in the quantity of that particular item of Unit Price Work performed by Contractor differs by more than thirty-three percent (33%) from the estimated quantity of such item indicated in the Contract; and

26.7.2 If there is no corresponding adjustment with respect to any other item of Work; and

26.7.3 If Contractor has incurred additional expense as a result thereof; or

26.7.4 If City believes that the quantity variation entitles it to an adjustment in the unit price and, the parties are unable to agree as to effect of any such variations in the quantity of Unit Price Work performed; then either City or Contractor may request the Consulting Engineer to make an adjustment in the Contract price.

26.8 No claim for extra work of any kind will be allowed except as provided herein. If extra work orders are given in accordance with the provisions of this Contract, such Work shall be considered a part hereof and subject to each and all of the terms and requirements of this Contract.

26.9 Contractor shall be responsible for notifying its surety(ies) of any modifications to the Contract price or time, and said surety(ies) shall not seek discharge as a result of any failure on Contractor's part to notify surety(ies).

GC-27 DEDUCTIONS FOR UNCORRECTED WORK

If City deems it inexpedient to have corrected any Work which is not in accordance with the Contract Documents, an equitable deduction from the Contract Price shall be made therefor.

GC-28 DELAYS AND EXTENSION OF TIME

28.1 If Contractor shall be delayed at any time in the progress of the Work by an act or omission of the City or by any separate contractor employed by the City and over which

Contractor has no control, and which is not a result of the Contractor's acts or the acts of any of its employees, Subcontractors or suppliers, negligent or otherwise, then the time of completion may be extended for such reasonable time as the Consulting Engineer and the City shall decide. If Work on the critical path is delayed due to acts or omissions of the City or any separate contractor employed by the City, an equitable adjustment in compensation may be made to the Contract as the City may reasonably decide. No charge shall be made by Contractor for hindrances or delays from any cause during the progress of the Work, or any portion thereof, included in this Contract, except as provided in this Article.

28.2 No such extension shall be made for delay unless Contractor provides written notice to Consulting Engineer of such delay, the reasons therefore and the expected length of delay within seven (7) days of the commencement of such delay. In the case of a continuing cause of delay, only one claim is necessary.

28.3 In executing the Contract, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time therein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such Work, whether growing out of delays in securing materials, workers, weather conditions or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the Work, or any portion thereof, included in this Contract, except as provided in this Article 28.

28.4 The Contractor shall delay or suspend the progress of the Work or any part thereof, whenever it shall be so required by written order of the Consulting Engineer, and for such periods of time as the Consulting Engineer shall require; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the Work, or any part thereof, the time for completion of Work so suspended or of Work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the Consulting Engineer shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the Work shall be stopped by order of the Consulting Engineer, through no fault of the Contractor, its employees, Subcontractors or suppliers, any expenses (see GC-26.7.3) which, in the opinion and judgment of the Consulting Engineer, are caused thereby shall be paid by the City to the Contractor; provided, however, that such suspension or suspensions shall not be the basis for any claim by Contractor for additional compensation or damages for delay.

28.5 The City reserves the right and may delay Work on certain portions of Work until such time as weather and/or utility relocations will allow proper progress on major items of Work. The City may direct the Contractor to clear the right-of-way before utility relocations, if, in the opinion of the Engineer, such clearing would expedite utility relocation. Also, the City may direct the Contractor to work on certain items of Work after partial utility relocations have been made. There shall be no charge made by the City or the Contractor for delays arising from the issuance of such delayed Work direction other than provided for in paragraphs 28.1-5 in this Article.

GC-29 WORK STOPPAGES

Contractor warrants to the City that there shall be no work stoppages or interruptions arising out of labor disputes, including, but not limited to, those due to the presence of both union and non-union workforces at the job site. Contractor further agrees that in the event of any strike, picket, sympathy strike, work stoppage or other form of labor dispute or picket in connection with the Work of the Contractor, other contractors, Subcontractors, the City, or any other person, the Contractor will, contingent upon the City providing a picket-free entrance, continue to perform the Work required herein without interruption or delay. Anything in this Contract to the contrary notwithstanding, in the event the Contractor fails to continue performance of the Work included herein without interruption or delay, because of such picket or other form of labor dispute, the City may terminate the services of said Contractor after giving forty-eight (48) hours written notice to Contractor and its sureties of its intent to do so, or the City may invoke any of the rights set forth elsewhere in the Contract Documents.

GC-30 PATENT LIABILITY CLAUSE

30.1 Contractor agrees to defend any claim, action or suit that may be brought against City, its Governing Body, officers, agents or employees for infringement of any patents arising out of the performance of this Contract or out of the use or disposal by or for the account of City of supplies furnished or construction Work performed hereunder, and also to indemnify and hold harmless City, its Governing Body, officers, agents, and employees against all judgments, decrees, damages, costs and expenses recovered against it or them or sustained by it or them on account of any such actual or alleged infringement.

30.2 It is understood that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment used in or furnished for the Work shall be included in the Contract Price. Final payment to the Contractor by the City shall not be made while any suit or claim involving infringement or alleged infringement of any patent remains unsettled.

GC-31 INDEPENDENT CONTRACTOR

31.1 The right of general supervision of the City and/or the Consulting Engineer shall not make the Contractor an agent of the City, and the liability of the Contractor for all damages to persons, firms and corporations arising from the Contractor's execution of the Work shall not be lessened because of such general supervision, but as to all such persons, firms and corporations, and the damages, if any, to them or their property, the Contractor herein is an independent contractor in respect to the Work.

31.2 Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the City, nor shall anything contained in the Contract Documents create any obligation on the part of the City to pay any sums due any Subcontractor.

GC-32 SEPARATE CONTRACTS

32.1 City reserves the right to perform by itself or let other contracts in connection with Work. Contractor shall afford reasonable opportunity for the introduction and storage of materials and the execution of Work by City or others and shall properly connect and coordinate its Work with the Work of City or others.

32.2 If any part of Contractor's Work depends upon the Work of the City or others, Contractor shall inspect and promptly report to City any defects in any such Work that render it unsuitable for proper execution or results. Its failure to so inspect and report shall constitute an acceptance by it of such other Work as fit and proper for the reception of its Work.

GC-33 RELATIONS WITH OTHER CONTRACTORS

33.1 The Contractor shall cooperate with all other contractors or workers who may be performing work on behalf of the City or any other entity on any work in the vicinity of the Work to be done under this Contract, and it shall so conduct its operations as to interfere to the least possible extent with the work of such contractors or workers. Contractor shall be responsible for any injury or damages that may be sustained by other contractors, workers or their work because of any fault or negligence on Contractor's part, and shall at its own expense repair or pay for such injury or damage. Any difference or conflict which may arise between the Contractor and other contractors, or between the Contractor and the workers of the City or any other entity, in regard to their Work, shall be adjusted and determined by the Consulting Engineer. If the Work of the Contractor is delayed or damaged because of any acts or omissions of any other contractor or contractors, the Contractor shall have no claim against the City on that account; provided, however, the City may, in its discretion, grant an extension of time.

33.2 When two or more contracts are being executed at one time in such manner that work on one contract may interfere with that on another, the Consulting Engineer shall decide

which contractor shall cease Work and which shall continue, whether the work on both contracts shall progress at the same time, and in what manner the work is to proceed.

33.3 When the territory of one contract is the necessary or convenient means of access for the transportation or movement of men/women, materials or appliances required for the execution of another contract, such privileges of access or any other responsible privilege may be granted by Consulting Engineer to the contractor so desiring to the extent which may be reasonably necessary.

33.4 In the event that Contractor is performing Work at a site or on a project involving City and one or more other private or governmental entities, which have their own contractors on site as well, Contractor shall advise Consulting Engineer when it anticipates that there may be interference with the Contractor's Work or with the work of any other contractor. Consulting Engineer shall, to the best of its ability, with input from Contractor as to coordination of the Work, seek to schedule Work of the various contractors so as to avoid as much inconvenience and delay as possible; provided, however, that in the event Contractor experiences a delay or damage to the Contractor's Work as a result of the presence of other such contractors, Contractor shall not be entitled to additional compensation or damages for delay or damage to the Contractor's Work.

GC-34 INDEMNITY

34.1 Definitions

For purposes of indemnification requirements as set forth throughout the Contract, the following terms shall have the meanings set forth below:

34.1.1 "The Contractor" means and includes Contractor, all of its affiliates and subsidiaries, its Subcontractors and materialmen and their respective servants, agents and employees; and

34.1.2 "Loss" means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim, whether real or spurious, for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of this Contract whether arising before or after the completion of the Work required hereunder.

34.2 The Indemnity

For purposes of this Contract, and without in any way limiting indemnification obligations that may be set forth elsewhere in the Contract, Contractor hereby agrees to indemnify, defend and hold harmless the City from any and all Loss where Loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractor, its employees, agents, Subcontractors and suppliers.

It is agreed as a specific element of consideration of this Contract that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party and, further, notwithstanding any theory of law including, but not limited to, a characterization of the City's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature.

34.3 General Limitation

Nothing in this Article shall be deemed to impose liability on the Contractor to indemnify the City for Loss when the City's negligence or other actionable fault is the sole cause of Loss.

34.4 Waiver of Statutory Defenses

With respect to the City's rights as set forth herein, the Contractor expressly waives all statutory defenses, including, but not limited to, those under workers compensation, contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the purposes of this Article.

GC-35 WARRANTY

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

35.2 Contractor shall assign to the City all manufacturers' and vendors' and subcontractors' warranties that may be called for by the Contract Documents.

GC-36 PROTECTION OF PROPERTY/LIABILITY OF OTHERS

36.1 The Contractor shall be solely liable for all damages to the City or the property of the City, to other contractors or other employees of the City, to neighboring premises, to Utilities, or to any private or personal property, due to improper, illegal or negligent conduct of the Contractor, its Subcontractors, employees or agents in and about said Work, or in the execution of the Work. The Contractor shall be liable to the City for any damages, whether property damage or personal injury, occasioned by the Contractor's use of any scaffolding, shoring, apparatus, ways, works, machinery, plant or any other process or thing that is required for the Work.

36.2 The Contractor shall give reasonable notice to the affected owner or owners when any such property is liable to injury or damage through the performance of the Work and shall make all necessary arrangements with such owner or owners relative to the removal and replacement or protection of such property and/or Utilities.

36.3 The Contractor shall satisfactorily shore, support and protect any and all structures and all pipes, sewers, drains, conduits and other facilities and shall be responsible for any damage resulting thereto. The Contractor shall not be entitled to any additional time on account of any postponement, interference or delay caused by any such structures and facilities being on the line of the Work, whether they are shown on the Contract Documents or not.

GC-37 PROVISION FOR EMERGENCIES

Whenever, in the opinion of the Consulting Engineer, the Contractor has not taken sufficient precaution for the safety of the public or the protection of the Work to be constructed under this Contract, or of adjacent structures or property which may be injured by process of construction, and whenever, in the opinion of the Consulting Engineer, an emergency shall arise and immediate action shall be considered necessary in order to protect property interests and to avoid personal injury and/or death, then the Consulting Engineer, with or without notice to the Contractor, shall, upon direction from the City, provide suitable protection to the said interests by causing such Work to be done and materials to be furnished at places as the Consulting Engineer may consider necessary and adequate. The cost and expense of such Work and material so furnished shall be borne by the Contractor and, if the same shall not be paid on presentation of the bills therefore, such costs shall be deducted from any amounts due or to become due the Contractor. The performance of such emergency work shall in no way relieve the Contractor of responsibility for damages which may occur during or after such precaution has been duly taken.

GC-38 ASSIGNMENT AND SUBLETTING OF CONTRACT

38.1 In case the Contractor assigns all, or any part, of the monies due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due

the Contractor shall be subject to all prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract and that no money shall be paid assignee on behalf of the Contractor by the City until such time as the Contractor has discharged its obligations to the City and its Subcontractors under the Contract. It is expressly understood and agreed that no assignment shall be effective as against the City unless it complies with the foregoing.

38.2 The Contractor shall not award subcontracts which total more than sixty percent (60%) of the total Contract Price based upon the unit prices within the Bid submitted to the City by the Contractor and shall self-perform not less than forty percent (40%) of the total Contract Price based upon the unit prices within the Bid submitted to the City by the Contractor. Should any Subcontractor fail to perform in a satisfactory manner, the Work undertaken by such Subcontractor shall be immediately rectified by the Contractor. The Contractor shall be as fully responsible to the City for the acts and omissions of its Subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it. Approval by the City of any Subcontractor shall not constitute a waiver of any right of the City to reject Defective Work, material or equipment not in compliance with the requirements of the Contract Documents. The Contractor shall not make any substitution for any Subcontractor accepted by the City unless the City so agrees in writing.

38.3 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the Work of the Subcontractor and to give the Contractor the same power to terminate any subcontract as the City has to terminate the Contractor under any provisions of the Contract Documents. Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the City, nor shall anything contained in the Contract Documents create any obligation on the part of the City to pay or to see to the payment of any sums due any Subcontractor.

38.4 Prior to the City's approval of the Contract Bid, the successful Bidder shall submit to the City Engineer or the City's designated representative a list of the names of all Subcontractors proposed for portions of the Work and shall designate which Work each is to perform.

38.5 The Consulting Engineer or the City's designated representative shall, prior to City's approval of the Contract Bid, notify the successful Bidder, in writing, if the City, after due investigation, has reasonable objection to any Subcontractor on such list, and the Contractor shall substitute a Subcontractor acceptable to the City at no additional cost to the City or shall be allowed to withdraw its Bid, and the City shall either rebid the Project or accept the next best lowest and responsible Bidder. The failure of the City to make objection to a Subcontractor shall not constitute a waiver of any right of the City to reject Defective Work, material or equipment not in conformance with the requirements of the Contract Documents.

38.6 The Contractor shall not make any substitution for any Subcontractor who has been engaged for the Project after submission to the City unless the Consulting Engineer or the City's designated representative determines that there is a good cause for doing so. The City's disapproval of any Subcontractor shall not, under any circumstances, be the basis for an increase in the Contract Price or a claim for delay damages.

GC-39 DISPUTE RESOLUTION

39.1 City and Contractor agree that disputes relative to the Work shall first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute Contractor shall proceed with the Work as per the Contract Documents as if no dispute existed; and provided further that no dispute will be submitted to arbitration without the City's express written consent.

39.2 In order to preserve its rights to dispute a matter hereunder, the complaining party must submit a written notice to the other party setting forth the basis for its complaint

within twenty (20) calendar days following receipt of the decision of the Consulting Engineer as to such matter as per Article GC-41. No dispute resolution shall be a condition precedent to any legal action.

GC-40 INSURANCE

The Contractor shall secure and maintain through the duration of this Contract insurance (on an occurrence basis unless otherwise agreed to) of such types and in such amounts (but not less than the amounts set forth in Section IB-8 of the Instructions to Bidders) as may be necessary to protect the Contractor and the City and agents of the City against all hazards or risks of Loss as hereinafter specified. The form and limits of such insurance, together with the underwriter thereof in each case, shall be approved by the City, but regardless of such approval it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation, including, but not limited to, the indemnification obligation.

Satisfactory certificates of insurance shall be filed with the City prior to Contractor's starting any construction work on this Contract. The certificates shall state that thirty (30) days written notice will be given to the City before any policy covered thereby is changed or cancelled. Failure by the Contractor to furnish the required insurance within the time specified in the Notice of Award of the Contract by the City may, at the City's option, be the basis for the City's exercising its right to terminate the Contract pursuant to Article GC-44.

40.1 Commercial General Liability - This insurance shall protect the Contractor against all claims arising from the injuries to members of the public or damage to property of others arising out of any act or omission of the Contractor or its agents, employees or Subcontractors. In addition, this policy shall specifically insure the contractual liability assumed by the Contractor under Article GC-34.

The liability limits shall be as stated in the Instructions to Bidders or in the Project Specific Special Provisions.

40.2 Automobile Liability - This insurance shall protect the Contractor against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on and off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned or hired.

The liability limits shall be as stated in the Instructions to Bidders or in the Project Specific Special Provisions.

40.3 Worker's Compensation and Employer's Liability - This insurance shall protect the Contractor against all claims under applicable state worker's compensation laws. The Contractor shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of a worker's compensation law. This policy shall include an "all states" endorsement.

The liability limits shall be as stated in the Instructions to Bidders or in the Project Specific Special Provisions.

40.4 Additional Insurance -

40.4.1 The Contractor shall be required to purchase an Owner's Protective Liability Insurance Policy, issued on an occurrence basis and covering bodily injury (and death) and property damage, naming the City as named insured. The liability limits shall be as stated in the Instructions to Bidders or in the Project Specific Special Provisions. The original policy shall be placed on file with the City and maintained during the life of the Contract. Such policy shall contain no exclusion relative to any function performed by the City or its employees and agents in connection with the Work.

40.4.2 Additional insurance covering special hazards may be required on certain projects. Such additional insurance requirements shall be as specified in Instructions to Bidders or Project Specific Special Provisions.

40.5 Subcontractors' Insurance - If a part of the Contract is to be sublet, the Contractor shall either:

- 40.5.1 cover all Subcontractors in its insurance policies; or
- 40.5.2 require each Subcontractor not so covered to secure insurance which will protect Subcontractor and the City against all applicable hazards or risks of loss as and in the minimum amounts designated for the Contractor.

GC-41 AUTHORITY AND DUTY OF THE CONSULTING ENGINEER

It is mutually agreed by and between the parties to this Contract that the Consulting Engineer shall observe and inspect all Work included herein (provided, however, that any such observations and inspections shall not alter the rights, responsibilities and obligations of the parties as set forth in Article GC-23). Anything in the Contract Documents to the contrary notwithstanding, in order to prevent delays and disputes, it is further agreed by and between the parties to this Contract that the Consulting Engineer shall in all cases determine the amount and quantities of the several kinds of Work which are to be paid for under this Contract; that Consulting Engineer shall determine all questions relating to the Plans and Specifications for the Project; that Consulting Engineer shall issue promptly any written clarifications or interpretations of the requirements of the Contract Documents (in the form of drawings or otherwise) which Consulting Engineer may determine are necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents; that Consulting Engineer's decisions and findings shall be a condition precedent to the right of the parties to submit any proper matter and to any rights of the Contractor to receive any money under this Contract; provided, however, that should the Consulting Engineer render any decision or give any direction which, in the opinion of either party hereto, is not in accordance with the meaning and intent of this Contract, either party may file with the other, within twenty (20) days a written objection to the decision or direction so rendered and, by such action, may reserve the right to submit the question so raised as herein provided, except as otherwise provided in Article GC-39. It is the intent of the Contract that there shall be no delay in the execution of the Work, and the decisions or directions of the Consulting Engineer as rendered shall be promptly carried out.

GC-42 CORRECTION OF WORK

42.1 At Consulting Engineer's request, Contractor shall, at Contractor's expense, promptly remove from the job site all labor, supplies, materials, equipment and/or other facilities condemned by Consulting Engineer as not in accordance with the Contract Documents, whether incorporated or not; and the Contractor shall, at Contractor's expense, promptly replace and re-execute all labor, supplies, materials, equipment and/or other facilities in accordance therewith and, at Contractor's expense, restore all Work of other Contractors and Subcontractors destroyed or damaged as a result of such removal, replacement and re-execution.

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

42.3 In addition to Contractor's obligations under Article 35, if, within two years after the date of Final Acceptance or other date established for commencement of warranties, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the City or Consulting Engineer to do so unless the City has previously given the Contractor a written acceptance of such condition. The City or Consulting Engineer shall give such notice promptly after discovery of the condition. During the two-year period for correction of Work, if the City discovers the defect and fails to notify the Contractor and give the Contractor a reasonable opportunity to make the correction(s), the City waives the right to require correction by the Contractor and to make a claim against Contractor for breach of warranty. If Contractor fails to correct non-

conforming Work within the time frame established by the City Engineer after receipt of notice, the City may correct it and Contractor shall be responsible for payment of the City's expenses.

GC-43 REMEDIES FOR DEFAULT BY CONTRACTOR

43.1 If Contractor fails or refuses to comply with any material term of this Contract, then the City may, upon five days' written notice to Contractor and its surety, take such action as the City deems appropriate to either correct the defective Work, terminate this Contract, or, in the City's sole discretion, permit Contractor to demonstrate its ability to successfully complete the Work and continue performance.

43.2 If the City should elect to not terminate at the time, but, after notice to Contractor's surety, to take other action such as to delete items of Work from Contractor's scope of work, or arrange to complete or repair defective or incomplete Work with other forces, Contractor and its surety shall be liable to the City for all costs and damages incurred.

43.3 In the event that a petition in bankruptcy is either filed by Contractor or by creditors of Contractor, Contractor shall immediately upon written notice from the City provide documented evidence of its ability to continue performance under the terms of this Contract. If Contractor is unable or unwilling to provide such evidence, Contractor shall immediately petition the Bankruptcy Court for an order rejecting the Contract as an executory contract of the Debtor, and lifting the Automatic Stay imposed pursuant to 11 U.S.C. §362(a) to enable the City to terminate this Contract and proceed to complete the Work.

43.4 In the event that the City should elect to terminate this Contract due to default by Contractor, the City may, subject to any prior rights of Contractor's surety:

43.4.1 take possession of the site and all materials, equipment, tools and construction equipment and machinery thereon owned by Contractor;

43.4.2 accept assignment of subcontracts with Contractor's Consultants, Subcontractors and suppliers as provided in Section 38.3, above; and

43.4.3 finish the Work by whatever reasonable method the City may deem expedient.

In the event that this Contract shall be terminated under the terms of this Article, the insurance, indemnification, warranty and other obligations that continue after termination shall continue to apply.

43.5 In the event that the City terminates this Contract for default by Contractor, no further payment shall be made to Contractor until the Work is completed and an accounting can be made of all of the City's damages. If any funds remain due and owing to Contractor at that time, the City shall remit them to Contractor. If, however, the costs and expenses of the City exceed any remaining contract balance, Contractor or its surety shall pay the difference to the City within ten days of receipt of invoice.

43.6 Any termination of the Contract for alleged default by Contractor that is ultimately determined to be unjustified shall automatically be deemed a termination for convenience of the City.

GC-44 TERMINATION FOR THE CONVENIENCE OF THE CITY

44.1 The City reserves the right, in its sole discretion and for its convenience and without cause or default on the part of the Contractor, to terminate this Contract in whole or in part by providing written notice of such termination to the Contractor. Upon receipt of such notice from the City, the Contractor shall: (a) immediately cease all Work; or (b) meet with the City and, subject to the City's approval, determine what Work shall be required of the Contractor in order to bring the Project to a reasonable termination in accordance with the request of the City.

44.2 If the City shall terminate for its convenience as herein provided, the City shall compensate the Contractor for Work satisfactorily completed to date of termination according to the schedule used for payment applications, and unavoidable expenses of termination. The

Contractor agrees that it shall minimize potential costs and liabilities of the City resulting from such termination.

44.3 In the event that this Contract shall be terminated under the terms of this Article, the insurance, indemnification, warranty and other obligations that continue after termination shall continue to apply.

GC-45 WAIVER OF CONSEQUENTIAL DAMAGES AND ANTICIPATORY PROFIT

Contractor hereby waives any claim against the City for consequential damages arising out of or relating to this Contract or the Work, or profit on Work not performed for any reason. This waiver includes damages incurred for principal office expenses including compensation of personnel stationed there, loss of financing, business and reputation, and loss of profit.

GC-46 PAYMENTS

46.1 Before the first application for payment, the Contractor shall submit to the Consulting Engineer a schedule of values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Consulting Engineer may require. This schedule, unless objected to by the Consulting Engineer, shall be used only as a basis for the Contractor's applications for payment and does not constitute approval by the Consulting Engineer of the method or performance by the Contractor.

46.2 Payment will be made to Contractor monthly from funds available on the basis of a duly certified estimate of the value of all labor and materials delivered on the site and accepted by the Consulting Engineer and the City during the preceding month, calculated in proportion to the Contract Price, but to ensure the proper performance of the Contract, ten percent (10%) of the amount of each estimate, (including undisputed portions of Work and un-finalized changes) will be retained until final completion and acceptance of Work covered by this Contract, unless the factors enumerated in K.S.A. §16-1904 justify the withholding of greater sums. With each Application for Payment, Contractor shall submit Affidavits of Payment and Release of Claims for itself and its subcontractors.

46.3 Each payment made to the Contractor shall be on account of the total amount payable to the Contractor by or for the City, and all materials and Work covered by the partial payments made shall therefore become the sole property of the City. This provision shall not be construed as relieving the Contractor from the responsibility imposed by the Contract Documents for the care and protection of materials and Work upon which payments have been made, for the restoration of any damaged Work, or as a waiver of the right of the City to require the fulfillment of all the terms of the Contract. Progress payments in respect to materials will be made only for materials delivered on the site and accepted by the Consulting Engineer, all calculated in proportion to the Contract Price.

46.4 In general, no allowance will be made in estimates for materials delivered and not incorporated in the Work except in case of those items considered by the City to be major items of considerable magnitude, which will be allowed in estimates on the basis of ninety-five percent (95%) of invoices unless the factors enumerated in K.S.A. §16-1904 justify the withholding of greater sums.

46.5 The retained percentages herein provided for are to be retained and held for the sole protection and benefit of the City, and no other person, firm or corporation shall have or assert any lien, claim, right or priority therein, thereon or thereto, or be entitled to receive any part thereof, except as herein expressly provided.

46.6 The City shall require at intervals as it shall determine and at any time before final payment is made for the Work specified herein that the Contractor furnish the City with written acknowledgments (to the extent of payment made) by all Subcontractors and vendors who have done work or labor on, or who have furnished materials for, this Project that they have been fully paid by the Contractor for such work or labor done or materials furnished by them for which payment has been made to Contractor by the City. Contractor's failure to furnish said list

or to include all such Subcontractors and vendors shall not relieve Contractor or its surety of any obligation assumed under this Contract, nor shall the City's request for such list create any obligation on City's part to verify accuracy. City may require, at its option, lien waivers.

46.7 The Contractor has, per the Instructions to Bidders, bid this job net of all sales and compensation taxes. No application for payment shall include any amount for reimbursement of such taxes paid by Contractor resulting from Contractor's failure to use the Project Exemption Certificate for any purchase in connection with the Work. Final payment will not be made to Contractor until the City has received the Project Completion Certification from the Contractor.

46.8 The Contractor shall be responsible for the return and/or exchange of surplus materials, and all credits for returned or exchanged materials shall be first submitted to the Consulting Engineer for approval. Applications for payment shall reflect any such credits, and the Contract Price shall be adjusted as necessary to reflect such credits. Non-returnable excess materials shall be turned over to the City, or, at its option, be removed from the Project site at Contractor's expense.

46.9 Final Completion and Final Payment

The acceptance by the Contractor of final payment shall be and shall operate as a release to the City of all claims and all liability to the Contractor other than written claims in stated amounts as may be specifically excepted by the Contractor for all things done or furnished in connection with this Contract and for every act and neglect of the City and others relating to or arising out of this Contract. Any payment, however, final or otherwise, shall not release the Contractor or its sureties from any obligations under the Contract Documents, the Bonds, or insurance coverage's.

GC-47 PAYMENTS WITHHELD

City may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any application for payment to the extent necessary to protect City from loss on account of:

47.1 Incomplete Work or Defective Work not remedied;

47.2 A reasonable doubt that the Work can be completed for the balance of the Contract Price then unpaid;

47.3 Damage to City; or

47.4 A breach of this Contract.

GC-48 LIQUIDATED DAMAGES

48.1 It is mutually understood and agreed by and between the parties to this Contract that time is of the essence of this Contract, and that in the event that the Contractor shall fail in the performance of the Work specified and required to be performed within the period of time stipulated therefore in the Contract, after due allowance for any extension or extensions of time which may be granted under the Contract, the said Contractor shall pay to City, as stipulated liquidated damages and not as a penalty, the sum stipulated herein for each and every day that the Contractor shall be in default.

48.2 Contractor acknowledges that its failure to achieve Final Completion by the date stipulated in the Agreement shall require the City to incur substantial additional costs and damages which may be difficult to calculate with specificity. Accordingly, the parties hereby agree to liquidate the City's damage for late completion to the amount stated in the Agreement, for each 24-hour calendar day, including weekends and holidays, the Work remains incomplete over the specified completion time, or such lesser amount as the City may agree to in the event that the City accepts partial occupancy of the Work.

48.3 The City shall have the right to deduct said liquidated damages from any moneys in its hands, otherwise due or to come due, to the Contractor, or to sue for and recover compensation for damages for nonperformance of this Contract.

48.4 In the case of joint responsibility for any delay in the final completion of the Work covered by this Contract, where two or more separate contracts are in force at the same time and cover work at the same site, the total amount of liquidated damages assessed against all contractors under such agreements, for any one day of delay in the final completion of the Work will not be greater than the approximate total of the damages sustained by the City by reason of such delay in completion of the Work, and the amount assessed against any one contractor for such one day of delay will be based upon the individual responsibility of such contractor for the aforesaid delays as determined by, and in the judgment of, the City.

GC-49 BONDS

Contractor shall after Notice of Award furnish City the Performance, Maintenance, Statutory or Labor and Material Payment Bond, and any other bonds, as may be required by the Instructions to Bidders and on the forms provided in the Bidding Documents. Failure to furnish such Bonds within the time specified in the Notice of Award may, at the City's option, be the basis for declaring Contractor in default and pursuing such legal rights as the City deems in its best interest, including, but not limited to, enforcement of the City's rights as to Bid security. With each bond there shall be filed with the City one copy of "Power of Attorney" certified to include the date of the bonds.

GC-50 EASEMENTS AND RIGHTS-OF-WAY

Permanent and temporary (construction) easements and rights-of-way will be provided by the City as shown on the plans. The Contractor shall confine its operations to the easements provided and shall carefully note where buildings, structures or other obstructions will limit its working space. In the event that easements and rights-of-way are not available or if they have not been secured, or if entry to property is denied by court order, injunction, litigation or any other reason, the Contractor shall cease operations in such area and confine its work to other areas approved by the City. In the event of any delay arising from delays in securing easements and rights-of-way, the Contractor shall have no claim against the City for damages arising from such delay but may request an extension of time under Article GC-28.

GC-51 USE OF PREMISES

51.1 Contractor shall confine its operations to limits indicated by Applicable Laws of the City or directions of Consulting Engineer and shall not unreasonably encumber the premises and/or site.

51.2 Contractor shall not load or permit any part of any structure, streets or highways to be loaded with a weight that exceeds load limits which will endanger their safety.

51.3 Contractor shall comply with Applicable Laws, as well as any specific instructions regarding signs, advertisements, fires and smoking from Consulting Engineer.

51.4 A laydown area or staging area will be provided at the site and shall be chosen by Consulting Engineer. Contractor will furnish its own weather protection if required.

51.5 No City equipment will be taken out of service or put into service without approval of City.

GC-52 ALLOWANCES

Contractor agrees that the Contract Price includes all allowances required by the Contract Documents. Contractor declares that the Contract Price includes all other sums for expenses and overhead and fee on account of allowances as it deems proper. No demand for expenses or overhead and fee other than those included in the Contract Price shall be allowed.

GC-53 CUTTING, PATCHING AND DIGGING

53.1 Contractor shall do all cutting, fitting or patching of its Work that may be required to make its several parts come together properly and fit it to receive or be received by Work of others shown upon or reasonably implied by the Contract Documents.

53.2 Contractor shall not endanger any property of City or any other individual or entity, or the Work by cutting, digging or otherwise and shall not cut or alter the work of others except with the written consent of City.

53.3 Contractor shall assume responsibility for the patching or repairs, by the proper trade, of damages caused by Work under this Contract.

53.4 Contractor shall comply with all Applicable Laws dealing with cutting, patching and digging and shall obtain all necessary permits.

GC-54 CLEANING UP

Contractor shall at all times keep the premises/site free from accumulations of waste material or rubbish caused by its employees or Work; and at the completion of the daily Work it shall remove all its rubbish from and about the premises/site and all its tools, scaffolding and surplus materials, and shall leave its Work "broom clean" or its equivalent unless more exactly specified. In case of dispute, City may remove the rubbish and charge the cost to Contractor.

GC-55 TEMPORARY FACILITIES

55.1 Except where special permission has been granted by City to use existing toilet facilities belonging to City, Contractor shall provide and maintain sanitary temporary toilet facilities located where directed by Consulting Engineer for accommodation of all persons engaged on the Work. Sanitary facilities shall be of reasonable capacity, properly maintained throughout the construction period, and obscured from public view to the greatest practical extent. If toilets of the chemically treated type are used, at least one toilet will be furnished for each twenty workers. Contractor shall enforce the use of such sanitary facilities by all personnel at the site.

55.2 Temporary toilets shall be enclosed and weatherproof and kept in sanitary and approved condition at all times. After use for same has ceased, Contractor shall remove the temporary toilet facilities from City's premises and disinfect and fill any vaults.

55.3 Contractor shall provide and maintain any necessary temporary offices, storerooms, roadways, etc., as may be required for its Work. Same shall be located and constructed in an approved manner acceptable to Consulting Engineer. Upon completion of Work or when requested by Consulting Engineer, Contractor shall remove same from City's premises and leave the area in a clean and orderly condition.

55.4 Contractor shall provide and maintain temporary heat as required to protect all Work and material against injury from dampness and/or cold to the satisfaction of City and Consulting Engineer.

55.5 Unless otherwise specified in the Contract Documents, Contractor shall provide, at its cost and expense, temporary power, wiring and lights from City's provided source as may be required for its operations.

GC-56 SANITARY REGULATIONS AND WATER

56.1 The operations of the Contractor shall be in full conformity with all of the rules and regulations of boards and bodies having jurisdiction with respect to sanitation. The Contractor shall supply safe and sufficient drinking water to all of its employees. The Contractor shall obey and enforce all sanitary regulations and orders, and shall take precautions against infectious diseases and the spread of same.

56.2 All water used in the course of the Work shall be hauled in or purchased from the local water company's distribution system at the Contractor's own cost and expense.

GC-57 COMPLIANCE WITH LAWS

The Contractor shall be fully familiar with all Applicable Laws which would in any way control the actions or operations of those engaged in the Work under this Contract or which would affect the materials supplied to or by them. It shall at all times observe and comply with all ordinances, laws and regulations and shall protect and indemnify and defend the City and the

City's officers and agents against any claims or liability arising from or based on any violation of same.

GC-58 UNFAVORABLE CONSTRUCTION CONDITIONS

During unfavorable weather, or other unfavorable conditions for construction operations, the Contractor shall pursue only such portions of the Work as will not be damaged thereby. No portions of the Work, the satisfactory quality or efficiency of which will be affected by any unfavorable conditions, shall be constructed while these conditions exist, unless, by special means or precautions approved by the Consulting Engineer, the Contractor shall be able to perform the Work in a proper and satisfactory manner.

GC-59 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of this Contract. This shall include full responsibility for the protection of all public and private property, structures, sewers, and Utilities, along, beneath, above, across or near the site or sites of the Work being performed under this Contract, or which are in any manner affected by the prosecution of the Work or the transportation of men/women or materials in connection therewith.

59.1 Safety of Persons and Property

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

59.1.1.1 employees on the Work and other persons who may be affected thereby;

59.1.1.2 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

59.1.1.3 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.

59.1.2 The Contractor shall give notices and comply with Applicable Laws and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

59.1.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards created by such features of construction as protruding nails, hod hoists, well holes, elevator hatchways, scaffolding, window openings, stairways, falling materials, open trenches, other excavations, obstructions and similar conditions, promulgating safety regulations and notifying owners and users of adjacent sites and Utilities. Barriers shall be kept placed at all times to protect persons other than those engaged on or about the Work from accident, and the Contractor will be held responsible for all accidents to persons or property resulting from the acts of the Contractor or its employees

59.1.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall apply for and obtain the necessary permits from the City for the use and storage of explosives or other hazardous materials.

59.1.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property caused in whole or 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 for and for which the Contractor is responsible, except damage or Loss attributable to acts or omissions of the City or anyone directly or indirectly employed by the City, or by anyone for whose acts the City may be liable for,

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 of indemnification.

59.1.6 The Contractor shall not load or permit any part of the construction or site to be loaded so as to create an unsafe condition.

59.2 Safety Program

59.2.1 The Contractor is expected to establish and enforce a comprehensive safety program on this Project for the protection of its personnel, its Subcontractors' personnel, the City's employees and all other persons exposed to hazards resulting from the Contractor's operations. 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.

As a minimum requirement, the Contractor shall review and discuss the details of its program with the City at the first project meeting. The items to be covered shall include, but not necessarily be limited to:

- A. Personal protective equipment;
- B. First aid - personnel and facilities;
- C. Arrangements for medical attention;
- D. Sanitary facilities;
- E. Fire protection;
- F. Signs, signals and barricades;
- G. Security regulations;
- H. Safety inspections;
- I. Designation of persons responsible for the program;
- J. Reporting forms and procedures;
- K. Material handling and storage;
- L. Lines of communication;
- M. Determination of potential hazards;
- N. Personnel safety meetings and education;
- O. Access to work areas;
- P. Subcontractors involvement in the program;
- Q. Inspections and corrective action.

59.2.2 The Contractor is fully responsible for the safety program and any and all methods and procedures provided for therein whether or not the City shall have reviewed and/or accepted such program.

59.3 Handling of Emergencies, Emergency Plan

In an emergency affecting the safety of life, the Work, the City's property or of adjoining property, the Contractor, without special instruction or authorization from the City, is hereby permitted to act, at its discretion, to prevent such threatened injury or loss.

59.4 Environmental Matters

59.4.1 Environmental Definitions. As used in this Contract, the terms defined in the General Provisions hereto shall have the respective meanings specified therein, and the following additional terms shall have the meanings specified:

59.4.1.1 "Environmental Claim" means any investigative, enforcement, cleanup, removal, containment, remedial or other private or governmental or regulatory action at any time threatened, instituted or completed pursuant to any applicable Environmental Requirement (hereinafter defined), against the City, relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or in any way arising in connection with any Hazardous Material (hereinafter defined) or any Environmental Requirement.

59.4.1.2 "Environmental Requirement" means any Environmental Law (hereinafter defined), agreement or restriction (including but not limited to any condition or requirement imposed by any insurance or surety company), as the same now exists or may be changed or amended or come into effect in the future, which pertains to health, safety, any Hazardous Material, or the environment, including but not limited to ground or air or water or noise pollution or contamination, and underground or aboveground tanks.

59.4.1.3 "Hazardous Material" means any substance, whether solid, liquid or gaseous: which is listed, defined or regulated as a "hazardous substance", "hazardous waste" or "solid waste", or otherwise classified as hazardous or toxic, in or pursuant to any Environmental Requirement; or which is or contains asbestos, lead-based paint, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or other petroleum hydrocarbons; in each of the foregoing cases such that the substance is present at a concentration or quantity above applicable standards pursuant to Environmental Law.

59.4.1.4 "Environmental Law" means any federal, state or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree, or rule of common law, and any judicial interpretation of any of the foregoing, which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground or air or water or noise pollution or contamination, and underground or above ground tanks), and all rules, regulations, orders and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

59.4.2 Environmental Compliance. The Contractor is responsible to ensure that the design developed and the construction performed by the Contractor or by subcontractors or agents of Contractor are in accordance with applicable Environmental Laws and Environmental Requirements. The Contractor will document compliance with applicable Environmental Laws and Environmental Requirements and provide such documentation to the City. This obligation includes identifying all Environmental Laws and Environmental Requirements and the presence of Hazardous Materials. This includes but is not limited to conducting appropriate inquiries, including environmental assessments and surveys to identify Hazardous Materials that may be encountered or disturbed or encountered as a part of conducting the Work.

59.4.3 Notice to the City/Stop Work.

59.4.3.1 If, despite best efforts to comply with 59.4.2, those efforts will be inadequate to prevent foreseeable bodily injury to persons as a result of the presence of Hazardous Materials or an imminent threat or actual release of Hazardous Material(s) as a part of the Work, the Contractor shall upon recognizing the condition immediately stop work in the affected area and report the condition to the City.

59.4.3.2 If (a) the condition was attributable to the presence of Hazardous Material(s) which Contractor did not cause to be introduced or rendered dangerous in the course of its design or construction, or (b) the Contractor could not have anticipated through reasonable due diligence, then the City shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

59.4.3.3 If the condition meets either criterion of section 59.4.3.2, and unless otherwise required by the Contract Documents, the City shall furnish in writing to the Contractor the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such Hazardous

Materials(s) or who are to perform the task of removal or safe containment of same. The Contractor will promptly reply to the City in writing stating whether or not either has reasonable objection to the persons or entities proposed by the City. If the Contractor has an objection to a person or entity proposed by the City, the City shall propose another to whom the Contractor has no reasonable objection. When the Hazardous Materials(s) has been rendered harmless, Work in the affected area shall resume upon written agreement of the City and the Contractor. The contract time shall be extended appropriately and the City may increase the contract price in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

59.4.3.4 If the condition described in the 59.4.3.1 does not meet either criteria described in 59.4.3.2, then Contractor shall undertake and pay for all of the steps described in 59.4.3.3, and the City shall have the rights of Contractor set forth in 59.4.3.3.

59.4.4 Environmental Indemnity. The Contractor will release, indemnify, defend, and hold harmless the City, and its directors, officers, employees, agents and other representatives from and against any and all actions, Environmental Claims, causes of action, costs, demands, damages, expenses, fines, penalties, liabilities, losses, obligations (Losses) arising out of the Contractor 's (including their employees, contractors and agents) breach of sections 59.4.1-3 or arising out of any negligent act or omission of Contractor (including their employees, contractors and agents) that causes any threatened or actual release of Hazardous Materials resulting in contamination of or adverse effects on, the environment.

GC-60 WEEKENDS, HOLIDAY AND NIGHT WORK

60.1 No Work shall be done between the hours of 6:00 p.m. and 7:00 a.m., nor on weekends or the City designated holidays, without the written approval or permission of the City, 48 hours in advance in each case, except such Work as may be necessary for the proper care, maintenance and protection of Work already done or of equipment, or in the case of an emergency.

60.2 Night Work may be established by the Contractor, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City.

GC-61 APPROVAL OF EQUALS

"Approved Equals," where permitted by the Contract Documents or otherwise made feasible by market conditions, shall be considered for approval as follows:

61.1 Contractor shall notify City in writing if it wishes to use an approved equal specifically named in the Contract Documents.

61.2 If Contractor desires to use an "equal" not specifically named in the Contract Documents, it must first inform City and receive written approval for such substitutions. City has no obligation to approve such request and is not responsible for any delay or cost incurred caused by Contractor's making such request.

61.3 The Contractor shall be solely responsible for design risks, delays and other claims arising out of any approved equal products.

GC-62 TEST OF MATERIALS OFFERED BY CONTRACTOR

All specified and required tests for approval of material shall be made at the expense of the Contractor by a properly equipped laboratory of established reputation, whose work and testing facilities shall be approved by the Consulting Engineer. Approval of materials based on acceptable tests will apply only while such materials as furnished equal or exceed the tested samples or test specimens in quality and minimum requirements. Any change in origin, method of preparation or manufacture of such materials will require new tests and approval thereof.

Reports of all tests shall be furnished to the Consulting Engineer in as many certified counterparts as may be required by the Consulting Engineer.

GC-63 TESTING OF COMPLETED WORK

Before Final Acceptance, all installed and constructed equipment, devices and other Work which is to be tested under the Contract Documents shall be tested and each part shall be in good condition and working order or shall be placed in such condition and order at the expense of the Contractor. All tests of such completed Work required under this Contract shall be made under the direction of the Consulting Engineer.

GC-64 BORROW AND WASTE AREAS

All borrow materials shall be obtained by the Contractor at its own cost and expense. The borrow area and materials shall be approved by the Consulting Engineer and shall be friable material suitable for compaction. All waste areas shall be located off the site and arrangements and payment for use of such areas shall be the sole responsibility of the Contractor. All waste disposal shall be in compliance with all Applicable Laws. Unless specifically stated in the Contract Documents, the City makes no representation as to the availability, feasibility, cost or restrictions on locations for borrow or disposal of materials.

GC-65 PARKING AREAS, DRIVES AND WALKS

All existing parking areas, drives and walks within the Project limits shall be adjusted to conform to the lines and grades shown on the Plans. Any of the above structures that are removed or damaged during construction shall be reconstructed at Contractor's expense of materials that will create a quality equal to or better than the condition of the existing facility prior to construction operation.

GC-66 STREET SIGNS AND TRAFFIC AIDS

The Contractor shall be responsible for all preexisting traffic control devices at the Project site, including installation, maintenance, removal and storage of such devices. All temporary and permanent traffic control devices supplied by the Contractor shall comply with and be installed in accordance with the Manual on Uniform Traffic Control Devices, current edition as revised, and the Traffic Control Devices Handbook.

GC-67 PLACING WORK IN SERVICE/PARTIAL UTILIZATION

If desired by the City, portions of the Work may be placed in service when completed for Partial Utilization by the City, and the Contractor shall give proper access to the Work for this purpose, but such use and operation shall not constitute an acceptance of the Work, and the Contractor shall be liable for defects due to faulty construction until the entire Work under this Contract is finally accepted and for such periods of time as designated in the Contract Documents or otherwise permitted by law.

GC-68 NON-DISCRIMINATION, AFFIRMATIVE ACTION AND PROHIBITION AGAINST SEXUAL HARASSMENT

68.1 The Contractor agrees that:

68.1.1 The Contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, ancestry or age;

68.1.2 In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission");

68.1.3 If the Contractor fails to comply with the manner in which the Contractor reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and

amendments thereto, the Contractor shall be deemed to have breached the present Contract and it may be cancelled, terminated or suspended, in whole or in part, by the City;

68.1.4 If the Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the City; and

68.1.5 The Contractor shall include the provisions of Subsections .1 through .4 of this Article in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.

68.2 The provisions of this Article shall not apply to a contract entered into by a Contractor:

68.2.1 Who employs fewer than four employees during the term of such contract; or

68.2.2 Whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.

68.3 The Contractor further agrees that the Contractor shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this Project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

68.4 Contractor shall observe the provisions of Chapter 8 of the Overland Park Municipal Code, and shall not discriminate against any person in the performance of work under the present Agreement because of race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, genetic information, marital status, familial status, or military status.

GC-69 TAXES

It is the intent of the City to supply Contractor with a Project Exemption Certificate for use in purchasing materials and supplies used on the Contract. Contractor shall, in preparing its Bid, omit from its computed costs all sales and compensation taxes. Upon issuance of a Kansas tax exemption number, two (2) copies of the Project Exemption Certificate (Form PR-74a) will be forwarded to Contractor. Upon completion of the Project, the City will provide the State of Kansas with the Contract completion date and the State will issue a Project Completion Certification on form DO-77. Final payment will not be made to the Contractor until the City has received the Project Completion Certification from the Contractor, along with other close-out documentation required by the Contract.

GC-70 RECORDS

Contractor shall maintain copies of records pertaining to the construction of this Project for a period of five (5) years from the date of final payment. The City and the City's accountants shall be afforded access to the Contractor's records, books, correspondence, instructions, Drawings, receipts, subcontracts, purchase orders, invoices, vouchers, memoranda, and other data relating to this Project, and the Contractor shall preserve these for a period of five (5) years after final payment, or for such longer period as may be required by law, and shall be subject to audit by the City and the Kansas Department of Revenue.

GC-71 TITLES, SUBHEADS AND CAPITALIZATION

Titles and subheadings as used herein and other Contract Documents are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Contract Documents. Some terms are capitalized throughout the Contract Documents, but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

GC-72 NO WAIVER OF RIGHTS

No waiver of any breach of this Contract shall be construed to be a waiver of any other or subsequent breach.

GC-73 SEVERABILITY

The parties agree that should any provision of the Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason such provision(s) shall be null and void but that the remaining provisions of the Contract Documents, unless the term(s) determined to be void, invalid, unenforceable or illegal go the basic consideration to the city for entering the Contract, shall be unaffected thereby and shall continue to be valid and enforceable.

GC-74 GOVERNING LAW

This Contract shall be governed by, and construed in accordance with, the laws of the State of Kansas.

GC-75 VENUE

Venue of any litigation arising in connection with this Contract shall be the State courts of Johnson County, Kansas.

City of Overland Park, Kansas
Parks and Recreation Department

Twelve (12) 2021 Treadmills

SPECIFICATIONS

The vendor shall comply with the following:

1. All parts and equipment shall be new 2021 or current production models.
2. Appurtenances and/or accessories not herein mentioned, but necessary to furnish complete treadmills ready for use upon delivery, shall be included.
3. Where the vendor's or component manufacturer's product exceeds the specification herein, the more stringent standard shall be used.
4. The City reserves the right to waive or take exception to any vendor submitted specifications.
5. The successful vendor shall authorize the City to perform minor warranty work if requested by the City after treadmills are delivered and accepted by the City. The City shall be reimbursed for parts and labor. All paperwork and instructions on how to setup warranty claims shall be delivered with treadmills.
6. Vendor must submit with their proposal the latest printed specifications and advertising literature on the equipment they propose to furnish.
7. Vendor shall supply 12 parts books, 12 service and repair manuals and 12 operator's manuals, or as otherwise stated in these specifications, for each piece of equipment. Please submit any of the above information on a removable drive (thumb drive).
8. If the vendor assigns all, or any part of the monies due or to become due under the Agreement, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due the vendor shall be subject to all prior claims of all persons, firms, and corporations for services rendered or materials supplied for the performance of the work called for in the Agreement and that no money shall be paid assignee on behalf of the vendor by the City until such time as the vendor has discharged its obligations to the City under the Agreement. It is expressly understood and agreed that no assignment shall be effective as against the City unless it complies with the foregoing.
9. Should any subcontractor fail to perform in a satisfactory manner, the work undertaken by such subcontractor shall be immediately terminated by the vendor. The vendor shall be fully responsible to the City for the acts and omissions of its subcontractors, and of persons

either directly or indirectly employed by them, as vendor is for the acts and omissions of persons directly employed by it. Approval by the City of any subcontractor shall not constitute a waiver of any right of the City to reject defective work, material, or equipment not in compliance with the requirements of the Agreement Documents. The vendor shall not make any substitution for any subcontractor accepted by the City unless the City so agrees in writing.

10. The vendor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the vendor by the terms of the Agreement insofar as applicable to the work of the subcontractor and to give the vendor the same power to terminate any subcontract as the City has to terminate the vendor under any provisions of the Agreement.
11. Nothing contained in the Agreement shall create any contractual relationship between any subcontractor and the City, nor shall anything contained in the Agreement create any obligation on the part of the City to pay to or to see to the payment of any sums due any subcontractor.
12. Discrepancies and Inquiries: Before submitting a bid, the Bidder shall carefully examine the entire contents of the bidding documents so as to be thoroughly familiar with all the requirements. Bidders are instructed to acquaint themselves with all the conditions affecting the bid and the provision of associated materials and or work contemplated hereunder. Bidders will promptly notify the Project Manager of any discrepancies, ambiguity, or error which they discover upon examination of the bidding documents. Discrepancy notifications and/or inquiries for clarification or interpretation of the bidding documents should be made to: **Sid Hanson at (913) 895-6392 or sid.hanson@opkansas.org**.
13. Addendum: All corrections, changes or interpretations of the bid documents will be made by addendum. Interpretations, corrections, or changes of the bid documents made in any other manner will not be binding. All addenda issued during the time of bidding will become part of the bidding documents and receipt thereof shall be acknowledged on the bid form. Addenda will be emailed, mailed, sent by facsimile machine or delivered to all those known to have a complete set of bidding documents addressed to their last known address. Copies of addenda will be made available for inspection wherever bidding documents are on file for that purpose.
14. Bid Award: Bid shall be awarded to the bidder offering the lowest and best price for twelve (12) 2021 new treadmills. Substantiating their ability, to the satisfaction of the City, to provide quality fabrication work and installation of outfitting accessories.
15. Delivery and Acceptance: Fully completed 2021 treadmills are to be delivered to: **Tomahawk Ridge Community Center, 11902 Lowell Ave, Overland Park, KS 66213.** Unless otherwise specified on the bid form, **treadmills are to be delivered within 120 calendar days from receipt of the order from the City.** Treadmills will be required to undergo a final inspection by City staff to ensure its compliance with the specifications before being accepted.
16. Warranty: Warranty shall be two (2) years parts and one (1) year labor at a minimum or factory standard, whichever is longest. Warranty period will begin on treadmills date of

delivery to the City and the City having provided written acceptance of the completed work. The warranty will include replacement or repair of materials or workmanship covered by the specifications at no cost to the City. The vendor shall include the conditions, as provided by the manufacturer, of the **standard warranty, with their proposal package**.

17. Payment will be made in full after final acceptance, and upon delivery to the City facility listed in the proposal documents.
18. The equipment specifications shall not be construed as recommending any manufacturer's equipment over any other make, provided that equal quality, parts, supply and availability, reliability and durability may be expected in performance unless a specific brand/item is required to work with current City systems. These items will be itemized as required/no substitutions allowed.
19. The City reserves the right to hold all proposals for a period of 45 days after receipt; likewise the City reserves the right to reject any or all proposals. The City also reserves the right to waive any or all technicalities on proposals. Proposals cannot be altered or changed after they have been received by the City.
20. Vendor submitting proposals on equipment not conforming to the detailed specifications must **state variances on the proposal form where applicable**.

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DETAILED SPECIFICATIONS FOR TWELVE (12) 2021 TREADMILLS

1.01 Motor:

- ≥ 4.0 HP
- Speed .5 to ≥ 14 mph

1.02 Incline Capabilities:

- $\geq 15\%$

1.03 Running Area:

- Needs a minimum of 22" wide X 60" long running surface.

1.04 Safety:

- Must have a safety clip for emergency stops.

1.05 Console Functionality:

- ≥ 35 Interactive/Virtual Courses
- Bluetooth capability
- WIFI Connectivity
- USB Charging port
- Remote Asset Management
- Hand sensor / heart rate monitor
- Wireless phone charging
- ANT+ (Be able to have the function to detect and pair personal wearable devices from patron)
- Auto Wake-Up (Needs to have the capability to quickly have machine detect a patron on the deck and be ready to go, as well as turn itself off when not in use)
- Screen Size be ≥ 16 " with various size options depending on price

1.06 Manufacturer Warranty:

- Electrical Components - Will have a minimum of two (2) years parts and one (1) year labor.
- Mechanical Parts-Will have a minimum of one (1) year parts and one (1) year labor.
- Additional purchased warranty options if offered.

1.07 Miscellaneous Specifications:

- Provide Certified Training for Overland Park City Employees
- Discount on parts needed after warranty or if warranty does not apply
- Maximum user weight ≥ 400 lbs.