

## **PART C - GENERAL CONDITIONS**

### **1. DEFINITIONS**

Whenever the following words or phrases occur in these Contract Documents, they shall have the following meaning:

- A. **Contractor** shall mean the party entering into the Contract for the performance of the work covered by the Contract and the Contractor's authorized agents or representatives.
- B. **District** shall mean the Metropolitan Utilities District of Omaha, Omaha, Nebraska.
- C. **Engineer** or **Architect** or **Inspector** shall mean any person designated by the District to inspect and observe the work and to require on behalf of the District that the Contract is performed in accordance with the Specifications.
- D. **Or Equal**, when used in connection with the name of any item of equipment or material, shall be construed to mean that the item so named will be used as a basis of comparison and that all makes of similar items will be considered, providing they have equal or better qualifications.
- E. **Subcontractor** includes only those having a direct contract with the Contractor and who furnish material worked to a special design according to the plans or specifications of the Work, but does not include one who merely furnishes materials not so worked.
- F. **Work** of the Contractor or Subcontractor includes labor or materials or both, equipment, transportation, or other facilities necessary to complete the contract.

### **2. EXECUTION, CORRELATION, AND INTENT OF DOCUMENTS**

The Contract Documents shall be signed in triplicate by the District and the Contractor. Signed copies of the Contract Documents shall be distributed as follows: one for the Contractor, and two for the District.

The Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. If there is a conflict between the drawings and the written specifications, the more stringent requirements shall govern. The intention of the Contract Documents is to include all labor and material, except that which is designated to be supplied by others, all tools and equipment, and everything necessary for the proper execution of the Work, and should any work or material not be denoted in the Contract, either directly or indirectly, but which is nevertheless necessary for the proper carrying out of the intent thereof, the Contractor shall understand the same is to be implied and required, and shall perform all work and furnish such materials as fully as if they were particularly delineated or described.

### **3. CONTRACTOR'S EXAMINATION OF THE WORK**

The Contractor has, by careful examination, become familiar with the nature and location of the Work, the conformation of the ground, the character, quality and quantity of the materials to be used, the character of the equipment and facilities needed preliminary to and during prosecution of the Work, the general and local conditions and all other matters which affect the Work under this Contract. No verbal agreement or conversation with any official, agent, or employee of the District or consulting Engineer, either before or after the execution of this Contract, shall modify its terms.

### **4. BONDS**

Upon execution of this Contract, the Contractor shall furnish a sufficient Performance Bond and Labor and Material Payment Bond each in the full amount of the Contract sum, guaranteeing the faithful performance of all the covenants, stipulations, and agreements including warranty and indemnification

provisions of the Contract; and a similar Bond guaranteeing payment of all bills for labor and material and obligations arising from the execution of this Contract which bills or obligations might in any manner become a claim against the District. All provisions of the bonds shall be in full accordance with statutory requirements. The bonds shall be on the form provided herewith and executed with the proper sureties through a company licensed and qualified to operate in the State of Nebraska and approved by the District. Bonds shall be countersigned by an agent resident in Nebraska and the date of bonds shall be the date of award of the Contract. If at any time during the continuance of the Contract a surety on the Contractor's bonds becomes irresponsible, the District shall have the right to require additional sureties which the Contractor shall furnish to the satisfaction of the District within ten (10) days after notice. In default thereof the Contract may be suspended, and all payments or money due the Contractor withheld.

## **5. INDEMNIFICATION**

The Contractor shall protect, defend, indemnify, and hold harmless the District and its officers, agents and employees, from any suits, actions, claims, losses or damage of any character and from all expenses incidental to the defense of such suits, actions or claims, based upon or alleged to be based upon or arising out of (1) any injury, disease, sickness or death of any person, (2) any damages to any property, including loss of use thereof, caused by an act or omission of the Contractor, or any Subcontractor or by their officers, agents, employees, or anyone under the Contractor's direction and control, and arising out of, resulting from, or caused by the performance or failure of performance of any work or services called for by the Contract or from condition created by the performance or non-performance of work or services, including but not limited to, defective material or inferior workmanship.

The obligations of Contractor under this section shall not extend to the liability of Consulting Engineer, its agents or employees arising out of the preparation or approval of drawings, change orders, designs, or specifications, which are certified by Consulting Engineer, providing that such preparation or approval by Consulting Engineer is the sole cause of the bodily injury, sickness, disease or death, or injury to or destruction of property. Approvals of the above documents by the Consulting Engineer shall be subject to the conditions, limitations, and exceptions stated in such documents and in the Contract Documents. Approval of a document shall not be implied by nor inferred from any act or statement of Consulting Engineer and Consulting Engineer shall not be deemed to have approved any document unless such document bears consulting Engineers Certificate or seal.

## **6. REGISTRATION AND BONDING – NON-RESIDENT CONTRACTORS**

Non-resident Contractors and non-resident Subcontractors are subject to the provisions of Sections 77-3101 through 77-3112, Nebraska Statutes (Reissue 2003) requiring registration and bonding with the State Tax Commissioner before commencing of work under this Contract. Information as to these requirements may be obtained from the Department of Revenue, Licensing Section, State Capitol Building, Lincoln, Nebraska 68509.

## **7. REPORTING OF CLAIMS**

The Contractor shall promptly report to its insurance carrier or representative all alleged claims for personal injury or property damage. The Contractor shall also promptly advise the District of the name and address of the insurance adjuster or local agent who will handle such claims.

## **8. ASSIGNMENT OF CONTRACT**

The Contractor shall not assign or transfer this Contract, in whole or in part, without the written consent of the District and of the Surety on the Contractor's Bond. Such consent of Surety, together with copy of the assignment, shall be filed with the Engineer. No assignment or transfer, even though consented to, shall relieve the Contractor of liability under this Contract. Should any assignee fail to perform the Work undertaken by the assignee in a satisfactory manner, the District may at its option annul Assignee's Contract.

## **9. SUBCONTRACTORS**

The Contractor shall, as soon as possible after the Contract has been awarded, and prior to the execution of the Contract Documents, notify the District in writing of the name of Subcontractors proposed for the Work. The Contractor shall not employ any Subcontractor that the District may within a reasonable time object to as unsatisfactory. The Contractor shall be fully responsible to the District for the acts and omissions of Subcontractors and of persons either directly or indirectly employed by them.

## **10. PERMITS AND REGULATIONS**

Permits, licenses and easements required for construction of permanent structures or for permanent changes in existing facilities shall be secured and paid for by the District unless otherwise specified. Permits, licenses and fees of a temporary nature, such as street cuts, paving cuts, sidewalk repair, plumbing, sewer connections, storm water discharge or other such requirements necessary for execution of the Contract shall be secured and paid for by the Contractor.

The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on conduct of the Work as drawn and specified. If the Contractor has knowledge that the drawings and specifications contradict any law, ordinance, rule, or regulation, the Contractor shall promptly notify the District, and any necessary changes shall be made as provided in the Contract for change in the work. If the Contractor performs any work knowing it is contrary to such laws, ordinances, rules and regulations, and without such notice to the District, Contractor shall bear all costs relating to such work.

## **11. REFERENCE TO STANDARD SPECIFICATIONS**

Any reference to standards or standard specifications in any of the Contract Documents shall mean the latest edition (prior to the first date of publication of the Notice to Bidders) of the standard specification or specifications unless otherwise stated.

## **12. DRAWINGS AND INSTRUCTIONS**

The District shall furnish to the Contractor, free of charge, as many copies of drawings and specifications as are reasonably necessary for the execution of the Work.

The District shall furnish, with reasonable promptness by means of drawings or otherwise, any additional instructions necessary for the proper execution of the Work, requested by Contractor. These instructions shall not include preparation of shop drawings which shall be the sole responsibility of the Contractor. All such drawings and instructions shall be consistent with the Contract Documents, true developments thereof, and reasonably inferable therefrom.

Contract Documents, including drawings furnished by the District, are its property. Contract Documents shall not be used on other work.

The Contractor shall keep one copy of all drawings and specifications on the job site, in good order, available to the District and representatives.

## **13. SHOP DRAWINGS AND SUBMITTALS**

The Contractor shall verify all field measurements and provide all submittals required and shall submit, promptly so as to cause no delay in Contractor's work or that of any other Contractor, four copies, checked and approved by the Contractor, of all shop and setting drawings, submittals, and schedules required by the Contract Drawings and Specifications or for the work of various trades. The District shall review them with reasonable promptness, making desired corrections, including all necessary comments and corrections. The Contractor shall make any corrections required by the District, and shall furnish the District four correct copies. If revised drawings are required, the District's approval of such drawings or schedules shall not relieve the Contractor from responsibility for deviation from drawings and

specifications, unless Contractor has in writing called the District's attention to such deviations at the time of submission, nor shall it relieve the Contractor from responsibility for errors of any sort in shop drawings, submittals or schedules.

#### **14. MATERIAL**

Materials and items of equipment furnished shall be new and shall meet the requirements of the Drawings and Specifications as to quality, performance, suitability and appearance.

All items of equipment and material furnished shall comply with all applicable provisions of the Occupational Safety and Health Act of 1970 and the Nebraska Department of Labor Workplace Safety Consultation Program including all standards and rules and regulations established thereunder.

Materials or work described in words that have a well-known technical or trade meaning shall be held to refer to such recognized standards. Materials or equipment specified by name of one or more manufacturers shall be supplied with no substitutions. Where specified "or equal" to the product of any particular manufacturer, the Contractor shall provide all necessary information for a comparison between the item specified and the proposed substitute item. Approval of the material or equipment proposed by the Contractor shall be obtained by submitting the information to the Engineer in time to prevent any delay of the Contract. Any proposed substitution of materials may be judged on the basis of quality, performance, appearance and on the governing space limitations. The reputation of the manufacturer and the availability of repair or replacement parts may also be considered. The entire cost of all changes of any type, due to substitutions for materials specified, shall be borne by the Contractor, at no extra cost to the District.

The District shall be the sole and final judge as to the suitability of substitution items. The District shall return approved or corrected copies of information on the proposed materials within a reasonable time. The acceptance by the District of a proposal for equal material shall not relieve the Contractor from responsibility for deviations from Contract requirements unless the Contractor has, in writing, called the District's attention to such deviation at the time of submission.

The Contractor shall be responsible for errors in supplying materials and shall replace all items erroneously delivered to the job site with the specified or approved equal material. All material shall be subject to on-site inspection.

#### **15. STORAGE OF MATERIAL**

The Contractor shall be responsible for the care and storage of materials delivered on the work site or purchased for use thereon. Should any material delivered to the work site become damaged or otherwise unsuitable for use before actual incorporation in the Work, such material may be rejected by the District even though it was previously accepted. Stored materials shall be located so as to facilitate inspection.

#### **16. ROYALTIES AND PATENTS**

The Contractor shall pay all royalties and license fees, shall defend all suits or claims for infringement of any patent rights, and shall hold harmless the District from loss on account thereof.

#### **17. MATERIAL AND EQUIPMENT INSTALLATION**

The Contractor shall install all as-specified materials and shall be responsible for malfunction or damages caused by their improper installation.

## **18. INSPECTION**

All materials used and all work performed shall be subject to inspection, test, and approval of the District.

Inspection, tests, or approval of waiver of tests shall not relieve the Contractor of responsibility for furnishing apparatus, equipment, and materials meeting the guaranteed performance and requirements of the Contract.

The Contractor shall furnish samples for testing purposes of any material required by the District, and shall furnish any information required concerning the nature or source of any material that the Contractor proposes to use. Detailed requirements concerning the making of laboratory tests are included in the Specifications.

Inspectors may be appointed by the District, whose duties shall be to determine that the Work is being completed in accordance with the Plans and Specifications and to endeavor to protect the District against defects and deficiencies in the work of the Contractor; provided, however, such Inspectors shall not be responsible for construction means, methods, techniques, sequences, or procedures or for safety precautions or programs or for Contractor's failure to perform work in accordance with the Contract and notwithstanding the foregoing, inspections, tests, or approval of waiver of test shall not in any way relieve the Contractor of full responsibility for furnishing apparatus, equipment and all materials meeting the guaranteed performance and requirements of the Contract. Inspectors shall have the authority, subject to the final decision of the District, to condemn and reject any defective work or material and to suspend the Work when it is not being properly done or, at inspectors' option, recommend no payment for improper work or recommend termination of the Contract, provided however, notwithstanding the foregoing, the District and its Inspectors shall have no responsibility for the means, methods or techniques or safety measures as all such items shall be the sole responsibility of the Contractor.

No footings, foundations, fittings, valves, backing blocks, or other appurtenances shall be backfilled until they have been observed by the Inspector after installation. If any such items are backfilled by the Contractor, which have not been observed by the Inspector, the Contractor may be required to expose them for proper inspection and re-backfill at Contractor's expense.

All condemned work shall be promptly removed and replaced by satisfactory work, and all condemned materials shall be promptly removed from the vicinity of the Work. Should the Contractor fail or refuse to comply with instructions in this respect the District may, withhold payment or proceed to terminate the Contract.

The District may order re-examination of questioned work, and if so ordered the Contractor shall uncover the work. If such work is found to be in accord with the Contract Documents, the District shall pay the costs of reexamination and replacement. If such work is found to be not in accord with the Contract Documents, the Contractor shall pay such cost, unless the Contractor shall prove that the defect in the Work was caused by another Contractor. In that event the District shall pay such cost. Any defective material or workmanship may be rejected by the District at any time before the final acceptance of the work, even though it may have been previously overlooked and estimated for payment.

## **19. TESTS**

All tests required during the manufacture of materials to determine compliance with the Specifications shall be furnished to the District at no cost.

The Contractor, during the course of work, may perform tests to determine that the Work complies with the Specifications. These tests shall be at the Contractor's expense and the Contractor shall furnish the District copies of all test results.

Tests shall be performed as required under the Specification sections and whenever deemed necessary by the District. Except as otherwise provided in the Contract Documents all costs of this testing shall be

paid by the District. If these tests indicate materials and work do not meet requirements as specified, all re-testing shall be at the Contractor's expense. These tests shall not relieve the Contractor from responsibility to comply with the specifications and other provisions of the Contract.

## **20. SUPERVISION**

The Contractor shall assign to the work site, during its progress, a competent superintendent satisfactory to the District. The superintendent shall represent the Contractor and all directions given to the superintendent shall be binding as if given to the Contractor.

## **21. PROTECTION OF WORK AND PROPERTY**

The Contractor shall continuously protect all its work from damage, and shall protect the District's property from injury or loss arising in connection with this Contract. The Contractor shall make good any such damage, injury, or loss. The Contractor shall adequately protect adjacent property. The Contractor shall provide and maintain all passageways, guard fences, lights, and other facilities for protection required by public authority or local conditions. The Contractor shall provide for signs, barricading, and separation of work from traffic as provided in the permit from the controlling agency to the District and the Manual on Uniform Traffic Control Devices published by the Federal Highway Administration.

## **22. THE DISTRICT'S RIGHT TO DO WORK**

If the Contractor fails to prosecute the Work properly or fails to perform any provision of this Contract, the District, after three (3) days written notice to the Contractor, may without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment due to the Contractor.

In cases where further damage may occur, or parts of the District's system involving service to customers may be threatened, and the Contractor cannot proceed immediately, the District may take immediate appropriate action. The District shall notify the Contractor of the action taken. The work performed by the District shall be charged to the Contractor at the current time and material basis by deducting it from payment due or by billing the Contractor for the Work.

## **23. SCHEDULE AND SEQUENCE OF WORK**

If requested by the District, the Contractor shall submit to the District, a schedule which shall show the order in which the Contractor proposes to perform the Work with dates at which time the Contractor will start the several parts of the Work and estimated dates of completion of the several parts.

## **24. USE OF COMPLETED PORTIONS**

The District may take possession of and use any completed or partially completed portions of the Work, notwithstanding the time for completing the entire Work or such portions may not have expired. Taking possession of and use shall not be deemed an acceptance of any work not completed in accordance with the Contract Documents. If such prior use increases the cost of, or delays the work, the Contractor shall be entitled to such extra compensation, or extension of time, or both as the District may determine.

## **25. RIGHT TO ACCESS OF SITE**

The District may use portions of the construction site for whatever purpose it deems necessary, whether in conjunction with the Contract Work or whether completely unrelated to the Contract Work.

## **26. THE DISTRICT'S RIGHT TO TERMINATE CONTRACT**

If the Contractor is adjudged bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of insolvency, or if the Contractor repeatedly fails, except in cases for

which extension of time is provided, to supply enough properly skilled workers or proper materials, or if the Contractor fails to make prompt payment to Subcontractors for material or labor, or disregards laws, ordinances or the instructions of the District, or otherwise is guilty of a substantial violation of any provision of the Contract, the District may, without prejudice to any other right or remedy, and after giving the Contractor seven (7) days written notice, terminate the Contract and take possession of all the premises and all materials, tools and appliances thereon and finish any work by whatever methods it may deem expedient. The Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Contract price shall exceed the expense of finishing the Work, including compensation for additional managerial and administrative services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the District.

## **27. REMOVAL OF EQUIPMENT**

In the case of termination of this Contract before completion from any cause whatever, the Contractor, if notified to do so by the District, shall promptly remove any or all of the Contractor's equipment. The District shall have the right to remove and store, if necessary, such equipment and supplies, at the expense of the Contractor.

## **28. SEPARATE CONTRACTS**

The District reserves the right to let other contracts in connection with this Work. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate the Work with the other Contractors.

If any part of the Contractor's work depends for proper execution upon the work of others, the Contractor shall inspect and promptly report to the District any defects in such work that render it unsuitable for proper execution. Failure to inspect and report shall constitute an acceptance of the other's work as proper for the reception of Contractor's work, except as to defects which may develop in the work of others after the execution of Contractor's work.

To insure the proper execution of subsequent work, the Contractor shall measure work already in place and shall at once report to the District any discrepancy between the executed work and the drawings.

## **29. LAYING OUT WORK**

The Contractor shall lay out and stake the Work and be responsible for all lines, elevations and measurements connected with the Work.

The Contractor shall, immediately upon entering the project site, for purpose of beginning work, locate all general reference points and take such action as is necessary to prevent their destruction.

The Contractor shall verify figures shown on drawings before laying out Work and shall be responsible for any error resulting from the failure to do so.

The data given herein and on the drawings is as accurate as could be reasonably secured. Their accuracy is not guaranteed and the Contractor shall obtain exact locations, measurements, and levels, at the site and shall adapt the work to the actual conditions.

If the Contractor, in the course of the Work, finds any discrepancy between the drawings and the physical conditions of the locality, or any errors or omissions in drawings or in the layout as given by survey points and instructions, the Contractor shall immediately inform the District, in writing, and the District shall promptly verify. Any work done after such discovery, until authorized, shall be done at the Contractor's risk.

### **30. ACCESS AND DRAINAGE**

The Contractor shall provide adequate access roads to and throughout the site, shall keep all natural drainage and water courses unobstructed or provide other equal courses effectively placed, and shall maintain the access and drainage facilities so as to afford vehicular access to the major work areas and prevent accumulations of surface water.

The District will perform no work to provide or improve any access road into the site work. The District assumes no responsibility for the condition or maintenance of any street or structure that may be used by the Contractor in performing the Work, or in traveling to and from the site of the Work. No payment shall be made to the Contractor by the District for any work done in improving, repairing or maintaining any road or structure thereon for use in the performance of work under these Contract Documents, except as specifically stated or shown on the plans.

### **31. UTILITIES**

The Contractor shall locate all telephone, water, gas, electric, sewer, TV cables, traffic light cables, or other utilities which may exist relating to performance of the Contract and shall take every precautionary measure to protect those lines and appurtenances both above and below the ground surface. The Nebraska One-Call Notification System Act, Nebraska Statutes 76-2301 through 76-2330, provides for duties of both excavators and utility operators in obtaining locations of and protection of buried utilities.

The Contractor shall comply with the Act which requires notice to the Digger's Hotline at 811 at least two (2) full working days, but not more than 10 working days prior to commencement of any excavating activities.

The Contractor shall make application for and have installed all temporary facilities necessary for Contractor's use and shall pay all bills for permanent and temporary connections and for utilities supplied until acceptance of the Contract.

### **32. ADDITIONAL, OMITTED, OR CHANGED WORK**

The District, without invalidating the Contract, may order additional work to be done in connection with the Contract or may alter or deduct from the Work, the Contract sum to be adjusted accordingly. All work shall be executed under the conditions of the original Contract and subject to the same inspection and tests as in the original contract.

The District shall have the authority, by oral instructions, to make minor changes in the Work, not inconsistent with the purposes of the Work. Otherwise, except in an emergency endangering life or property, extra work or changes shall be performed as ordered in writing by the District, which order shall state the location, character, amount, and method of compensation. No extra work or change shall be made unless in pursuance of the written order by the District, and no claim for an addition to the contract sum shall be valid unless so ordered. The adjustment to the Contract sum for any such work or change shall be determined in one or more of the following ways:

- A. By a lump sum price agreed upon in writing prior to starting the additional or changed work.
- B. By unit prices named in the Proposal or as agreed upon in writing prior to starting the additional or changed work.

Changed work shall be adjusted considering separately the parts of the work added and the parts omitted. The Contractor shall, within fifteen (15) calendar days after the agreement between the Contractor and the District for any change in work, submit an itemized statement of additional or deleted work and the respective contract cost change for each addition and each deletion. The District, upon approval of the statement, will write a Change Order that will be submitted in triplicate to the Contractor for approval and return. The Change Order, after approval of the Contractor and Engineer, shall be



submitted to the District for final approval. After the District officially acts on the Change Order, an approved copy will be sent to the Contractor, which will authorize the Contractor to either perform the work or delete the work described in the Change Order. The Contractor shall not act upon the change until the Change Order has been approved by the District.

### **33. CLEANING UP AND RESTORATION OF SITE**

The Contractor shall remove all temporary structures, rubbish and waste materials resulting from Contractor's operation at Contractor expense.

Upon completion of the Work and prior to final payment, the Contractor shall restore all portions of the construction site upon which construction operations, storage of material, or other such operations have occurred, to its original condition.

Where sod has been destroyed Contractor shall replace with growing sod of the type and variety to match the grasses already established and shall meet the quality requirements contained in the City of Omaha's Standard Specifications for Public Works Construction. Shrubs and trees that have been damaged shall be treated by a qualified nursery person or if extensively damaged shall be replaced.

### **34. DELAYS AND EXTENSION OF TIME**

The Contractor expressly covenants and agrees to complete the work within the time specified. The Contract Time may only be changed by a Change Order or a Written Amendment. Any claim for an extension or shortening of the Contract time shall be based on written notice delivered to the District promptly, but in no event later than seven (7) days, after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within 20 days after such occurrence. The District may allow additional time in order to ascertain more accurate data. The District will then review all claims for adjustment in time and provide the Contractor with its decision. No claim for an adjustment in the Contract time will be valid if not submitted in accordance with the requirements of this paragraph.

### **35. PAYMENT WITHHELD**

The District may withhold payment or, based on subsequently discovered evidence, nullify the whole or part of any estimate to such extent as may be necessary to protect itself from loss due to:

- A. Defective workmanship or materials not remedied.
- B. Claims filed or reasonable evidence indicating probable filing of claims.
- C. Failure of the Contractor to make payments properly to Subcontractors or for material or labor.
- D. Any other failure to comply with the provisions of the Contract.

When the above grounds have been removed, payment will be made for amounts withheld because of them.

### **36. CORRECTION OF WORK BEFORE FINAL PAYMENT**

The Contractor shall promptly remove from the premises all material condemned by the District as failing to meet Contract requirements, whether incorporated in the Work or not, and the Contractor shall promptly replace and re-execute the work in accordance with the Contract and without expense to the District and shall bear the expense of making good all work of other Contractors destroyed or damaged by such removal or replacement.

If the Contractor does not remove condemned work and materials within ten (10) days after written notice, the District may remove them and may store the materials at the Contractor's expense. If the Contractor does not pay the expense of such removal within thirty (30) days thereafter, the District may, upon ten (10) days written notice, sell such materials at auction or at private sale and shall pay to the Contractor the net proceeds, after deduction all the costs and expenses that should have been borne by the Contractor.

### **37. AFFIDAVIT THAT ALL BILLS PAID**

Upon completion of Contract, prior to final payment, the Contractor shall file an affidavit with the District, swearing that all workers employed on this project and the suppliers of all supplies and materials used, have been paid in full. The affidavit shall state that payment of all charges for damage to all utilities that may have occurred in conjunction with the work have been paid.

### **38. UNEMPLOYMENT COMPENSATION AND FINAL PAYMENT**

The Contractor shall pay to the Unemployment Compensation Fund of the State of Nebraska unemployment contributions and interests due under the provisions of Neb. Rev. Stat. Sections 48-601 to 48-671, Revised Statutes of Nebraska, on wages paid to individuals employed in the performance of the Contract.

Before payment on the final three percent (3%) of the contract shall be made by the District, the Contractor shall submit to the District a written clearance from the Commissioner of Labor certifying that all payments then due for contributions or interest relating to the Contract have been made by the Contractor or Subcontractors to the Unemployment Compensation Fund.

### **39. FINAL STATEMENT**

Upon completion of the work, prior to final payment, the Contractor shall submit a final statement to the District showing the total contract amount and all previous payments made.

### **40. COST INFORMATION**

After the Contract has been awarded, the Contractor shall file with the District a separation of Contractor's lump sum bid into items similar to the various subdivisions of the detailed specifications, plus applicable sales and use taxes the total of which shall equal the lump sum bid. The Contractor shall provide the separate costs of various materials upon request. The District shall use this information as a basis for making monthly estimates. Upon the District's request, the Contractor shall provide to the District the Contractor's calculation of applicable sales and use taxes or such information as will allow the District to calculate and verify applicable sales and use taxes.

### **41. PAYMENTS**

Payments shall be made by the District according to the following:

#### **A. Partial Payment While Work Is In Progress**

On or about the end of each month, the District shall make an estimate of the total work completed. Work completed shall mean work completed in place. Materials delivered to and properly stored on the job site and not installed shall only be considered for payment if installation is significantly delayed due to circumstances beyond the Contractor's control and only at the discretion of the Engineer. The District shall forward to the Contractor a breakdown of the estimate. The Contractor shall prepare, sign and notarize A.I.A. forms G702 and G703 (or equivalent) or shall sign and notarize the District's "Certificate Covering Estimate on Contract Work" and shall return it to the District.

After each estimate has been approved by the District, the District will pay to the Contractor, within thirty (30) days, the required percentage of the amount of such estimated sum less the sum of all previous payments (per the conditions of the Nebraska Construction Prompt Pay Act, effective July 17, 2014). If the District shall at any time fail to make the estimate or payment within the time stated above, such failure shall not be held to violate or void the Contract.

- \* The District shall pay the amount due on the Payment Application less retainage of ten percent. Retainage will be reduced to five percent at fifty percent completion. All retainage will be released upon completion of the project and paid with the Final Payment.

## **B. Final Payment**

As soon as all work has been completed and any tests have been accepted, the District shall make a final estimate and forward it to the Contractor with the necessary forms for processing as described previously. Final payment shall be made as follows:

The amount found due shall be payable within forty-five (45) days after substantial completion of the Contract and final acceptance of the work. Substantial completion shall be defined as completing all work and restoration as defined by the specifications, including any additional work that is agreed to and approved by the Contractor and the District, compliance with the provisions of paragraphs 37, 38, and 39 of the General Conditions, and approval of the Board of Directors.

The making and acceptance of the final payment shall constitute a waiver of all claims by the District other than those arising from unsettled claims, from faulty work or materials appearing after final payment, or from failure of the equipment to perform in accordance with the requirements of the specifications, and of claims by the Contractor, except those previously made and still unsettled.

## **42. DATE OF FINAL ACCEPTANCE – START OF WARRANTY PERIOD**

The final acceptance of the work and approval of the final payment by the Board of Directors of the District shall constitute final acceptance of the work and shall be the starting date of the warranty period as set forth in the Contract unless otherwise provided in the Contract. Any acceptances of tests, or written approval, or partial acceptance of work, or partial acceptance for use do not constitute an acceptance for the start of the warranty period. This final acceptance does not relieve the Contractor of further responsibility for the work, if failure or partial failure or defect in workmanship or material occurs during the warranty period or within such longer period of time as may be prescribed by law.

## **43. WARRANTY**

- \* The Contractor warrants all work performed and materials and goods provided under this Contract against defects in material and workmanship for a period of two (2) years or such longer period of time as may be prescribed by law or by the terms of any special warranty required by the Contract Documents. Such warranty shall be in addition to any warranties provided by the Contractor or manufacturer of any materials or goods provided. Any work which is found to be defective or not in accordance with the Contract Documents shall be corrected, repaired or replaced by the Contractor, without cost to the District for labor or material, promptly after receipt of notice from the District, to do so; provided, in a case where immediate repair of the defective or non-conforming portion of the Work is required to prevent impending or further damage or danger to life or property, the District may proceed to make the repairs or replacements and the Contractor shall be charged on the current time-and-materials basis.

The Contractor further warrants that all equipment, materials and/or supplies furnished under the Contract are fit for the purpose intended and shall perform in accordance with the requirements of the Contract for the same time period(s) as stated above.

The Contractor warrants all backfill against settlement for a period of three (3) years after the date of final payment. This includes replacing any settlement and correction of any damage caused due to settlement including but not limited to paving, sewers, and culverts.

#### **44. INSURANCE**

##### **A. Evidence of Insurance Coverage**

Prior to the execution of the Contract Documents, the Contractor shall submit written evidence that the minimum insurance required by the Contract Documents has been obtained including the District as an additional insured as its interests may appear.

For Workers' Compensation Automobile Liability and Property Damage Insurance and Comprehensive Public Liability, such written evidence shall be furnished in the form of Certificate of Insurance executed by the Contractor's insurance carrier(s) describing such insurance coverage in force for the specified period or by furnishing copies of the actual policies, as may be requested by the District.

The Contractor shall give the District thirty (30) days written notice by certified mail prior to cancellation or the reduction of any insurance coverage.

Insurance coverage shall be obtained as soon as possible after notification of awarding the bid and prior to the execution of Contract Documents so as to prevent delay in the execution of the Contract.

All insurance shall be subject to the approval of the District and shall be maintained until final acceptance of the Contract and final payment. Risk of loss shall remain upon the contractor until final acceptance by the District.

##### **B. Required Insurance Coverage**

The Contractor shall procure and maintain, during the life of the Contract, insurance coverage required by the table titled "Insurance Requirements."

**PART C - GENERAL CONDITIONS**

**INSURANCE REQUIREMENTS**

<u>Type Of Insurance</u>	<u>LIMITS OF LIABILITY</u>		
		<u>Each Occurrence</u>	<u>Aggregate</u>
<b>GENERAL LIABILITY</b> <ul style="list-style-type: none"> <li>Commercial General Liability (Occurrence Form)</li> </ul>	Bodily Injury and Property Damage Combined	\$1,000,000	\$2,000,000
<b>AUTOMOBILE LIABILITY</b> <ul style="list-style-type: none"> <li>Comprehensive Form</li> <li>Any Autos</li> <li>Hired Autos</li> <li>Non-Owned Autos</li> </ul>	Bodily Injury, Each Person	\$300,000	
	Bodily Injury, Each Accident	\$500,000	
	Property Damage	\$300,000	
	OR		
	Bodily Injury and Property Damage, Combined	\$500,000	
<b>EXCESS LIABILITY</b> <ul style="list-style-type: none"> <li>Umbrella Form</li> </ul>	Bodily Injury and Property Damage, Combined	\$2,000,000	\$2,000,000
<b>WORKERS COMPENSATION AND EMPLOYEERS LIABILITY</b>	Each Accident	\$500,000	
	Disease – Policy Limit	\$500,000	
	Disease – Each Employee	\$500,000	
<b>OTHER</b> <ul style="list-style-type: none"> <li>Additional Insured Endorsement Naming Metropolitan Utilities District to All Liability Coverages</li> </ul>			

Thirty (30) days written notice by Certified Mail prior to cancellation of any coverage is required.