

R-24-36

RESOLUTION NO. ____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO AN AMENDMENT TO THE CONTRACT FOR MCCAIN MEDIAN LANDSCAPING PHASE II; AND FOR OTHER PURPOSES.

WHEREAS, on or about July 23, 2023, the City of North Little Rock (“the City”) entered into a contract with Delta Grass Master, LLC for the installation of landscape, irrigation and other related work on McCain Boulevard between Fairway Avenue and Justin Matthews Drive (“Contract”); and

WHEREAS, the City and Delta Grass Master, LLC wish to amend the Contract to adjust the scope of work and pricing terms to account for delay caused by unforeseen circumstances.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That the Mayor and City Clerk are hereby authorized to enter into an Amendment to Agreement (substantially similar to Exhibit A attached hereto) to adjust the pricing term of the original agreement to the amount of Ninety Three Thousand Nine Hundred Sixty Six and 40/100 Dollars (\$93,866.40) and amend the Scope of Work term.

SECTION 2: That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED:

APPROVED:

Mayor Terry C. Hartwick

SPONSOR:

ATTEST:

Debi Ross
Council Member Debi Ross *by AF*

Diane Whitbey, City Clerk

Vince Insalaco III
Council Member Vince Insalaco III *by AF*

Nathan Hamilton
Council Member Nathan Hamilton *by AF*

FILED	<u>11:05</u>	A.M.	_____	P.M.
By	<u>A. Fields</u>			
DATE	<u>2-6-24</u>			
Diane Whitbey, City Clerk and Collector North Little Rock, Arkansas				
RECEIVED BY	<u>S. Issery</u>			

APPROVED AS TO FORM:


Amy Beckman Fields, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/kt



**AMENDMENT TO
McCain Median Landscaping Phase II Agreement
AND
CITY OF NORTH LITTLE ROCK, ARKANSAS**

THIS AMENDMENT TO McCain Median Landscaping Phase II Agreement (the “Amendment”) is made by and between **DELTA GRASSMASTERS, LLC** (“Contractor”), and the **CITY OF NORTH LITTLE ROCK, ARKANSAS** (“City”).

WHEREAS, Contractor and City are parties to that certain McCain Median Landscaping Phase II Agreement dated July 25, 2023, attached hereto and incorporated herein as Exhibit “A” (the “Agreement”);

WHEREAS, the Scope of Work on this Project has changed due to delay caused by modifications required by North Little Rock Electric, and the shut-down of Work for Christmas traffic, which required payment of a re-stocking fee to the nursery and Contractor’s re-mobilization costs; and

WHEREAS, Contractor and City desire to adjust the Scope of Work and pricing terms in Section 5.1.1 of the Agreement, as described in Exhibit “B” attached hereto and incorporated herein, which due to the increase in pricing terms, the City Council’s approval is necessary; and

WHEREAS, Contractor and City now desire to amend the Agreement according to the terms set forth below.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Contractor and City hereby agree to amend the Agreement as follows:

1. Capitalized Terms. All capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement.
2. Article 1. SCOPE OF WORK in 1.1.1 is modified as provided in Exhibit “B.”
3. Section 5.1.1 of the Agreement is hereby deleted in its entirety, and replaced with the following:

5.1. Payment

“5.1.1 Contractor hereby agrees with the City to commence and complete the Work for the sum of Ninety-Three Thousand Nine Hundred Sixty-Six and 40/100 DOLLARS (\$93,966.40) for all services associated with the Work as shown in the Invitation to Bid and Exhibit “B” to complete the Project, under the terms stated in the standard General Requirements, as modified and identified in the Contract Documents (see Project Manual). All invoices submitted to City by Contractor shall list in detail the services provided.”

4. Agreement. Except as amended herein, all other terms and conditions of the Agreement shall remain unaltered and the Agreement remains in effect, enforceable against each of the parties and is hereby ratified and acknowledged by each of the parties.

4. Governing Law. This Amendment shall be construed and interpreted under the laws of the State of Arkansas without giving effect to the provisions thereof relating to conflicts of law.

5. Counterparts. This Amendment may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be made and executed by their duly-authorized representatives effective as of the date signed by the City.

CITY OF NORTH LITTLE ROCK

By:

TERRY C. HARTWICK, MAYOR

DATE

DELTA GRASS MASTERS

By:

BOBBY BELL, PRESIDENT

DATE

ATTEST:

DIANE WHITBEY, CITY CLERK

DATE

Approved as to Form:

CITY OF NORTH LITTLE ROCK

Amy Beckman Fields
City Attorney

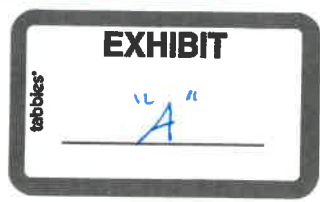
By:

Deputy City Attorney

Date

7/25/2023

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CONTRACT

FOR

McCain Median Landscaping Phase II

THIS CONTRACT, by and between the City of North Little Rock (“City”), acting herein through its Mayor, Terry C. Hartwick, and Delta Grass Master, LLC (“Contractor”), is effective on the date signed by the City.

In consideration of the mutual covenants herein, the parties agree as follows:

ARTICLE 1. SCOPE OF WORK

1.1 Work

1.1.1 The Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work generally is described as follows: Furnishing and installation of landscape, irrigation, and other miscellaneous items of work on McCain Boulevard in between Fairway and Justin Matthews.

1.1.2 All Contract Documents, including plans and specifications, are included in the Project Manual, which is incorporated herein by reference as though fully set forth herein as Exhibit A, a copy of which is provided to Contractor.

1.1.3 The Work includes but is not limited to, all labor, materials, equipment, supplies, and incidental items necessary to complete the project in conformance with the plans and specifications as more fully set forth in the Contract Documents (the “Project”). The Work may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

ARTICLE 2. CONTRACT DOCUMENTS

2.1 Intent of Contract Documents

2.1.1 It is the intent of the Contract Documents to describe a functionally complete project. The Contract Documents do not indicate or describe all of the Work required to complete the

Project. Additional details required for the correct installation of selected products are to be provided by the Contractor and coordinated with the City and Engineer. This Contract supersedes prior negotiations, representations, and agreements, whether written or oral. The Contract Documents are complementary; what is required by one part of the Contract Documents is as binding as if required by other parts of the Contract Documents.

2.1.2 During the performance of the Work and until final payment, Contractor and City shall submit all matters in question concerning the requirements of the Contract Documents, or relating to the acceptability of the Work under the Contract Documents to the Engineer. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.

2.1.3 Engineer will render a written clarification, interpretation, or decision on the issue submitted, or initiate a modification to the Contract Documents.

2.1.4 Contractor, and its subcontractors and suppliers, shall not have or acquire any title to or ownership rights to any of the Drawings, Specifications, or other documents (including copies or electronic media editions) prepared by Engineer or its consultants.

2.2 Contract Documents Defined

2.2.1 The Contract Documents shall consist of the following documents:

- .1 The fully executed Contract; which incorporates by reference document (.2) thru (.6).
- .2 The Invitation to Bid, without the bidding requirements dated: May 14, 2023.
- .3 The Contractor's Bid dated: May 25, 2023, including any attachments.
- .4 Project Manual, which contains General Requirements, and applicable Drawings and Specifications;
- .5 Performance, Maintenance and Payment Bond;
- .6 Certificate of Insurance Coverage, including Workers' Compensation Insurance;

The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto, but are incorporated by reference as if fully set forth herein:

- .7 Written Amendments;
- .8 Work Change Directives;
- .9 Change Order(s); and
- .10 Notice to Proceed.

2.3 To the extent of any direct conflict between any of the Contract Documents, the Contractor shall immediately seek clarification from the Engineer. In the event that the Engineer fails to promptly clarify such discrepancy, the Contractor shall proceed with the Work and give precedence to the Contract Documents in the following order of priority:

- 2.3.1 Modifications issued after execution of this Agreement;
- 2.3.2 This Agreement, as modified;
- 2.2.3 Addenda issued prior to the execution of the Agreement, with the Addenda bearing the latest date taking precedence;
- 2.3.4 Any Supplementary Conditions, if applicable;
- 2.3.5 The General Conditions of the Contract for Construction, as modified;
- 2.3.6 The Drawings and Specifications; and
- 2.3.7 Other documents specifically enumerated in the Agreement as part of the Contract Documents.

2.4 The Contract Documents may only be amended, modified, or supplemented as provided in Article 11 of the Standard General Conditions of the Construction Contract, as modified and identified in the Supplementary General Conditions, if applicable.

ARTICLE 3 ENGINEER

3.1 Engineer

3.1.1 The Project will be coordinated by:

Half Associates

3.2 City of North Little Rock, AR Coordination (David Cook, Chief City Engineer) who is hereinafter called ENGINEER and who is to act as City's representative, assume(s) all duties and responsibilities, and have the rights and authority assigned to ENGINEER in the Contract Documents.

ARTICLE 4 CONTRACT TIMES, DATES FOR SUBSTANTIAL COMPLETION, AND LIQUIDATED DAMAGES

4.1 Contract Times

4.1.1 Contractor hereby agrees to commence the work on the Project on or before a date to be specified in a written Notice to Proceed (NTP) of the City, incorporated by reference as set forth herein, and to fully complete the Project within 60 Calendar Days or as determined in writing by City Engineer

4.2 Liquidated Damages

4.2.1 Contractor and City recognize that time is of the essence in the performance of the Contract, and that City will incur damages if Contractor does not complete the Work according to the requirements of Paragraph 4.1. Because such damages for delay would be difficult and costly to determine, City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay City **\$1,000.00** for each day that expires after the Contract Time for substantial completion.

4.3 Delays in Contractor's Progress

4.3.1 If City, Engineer, or anyone for whom City is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

4.3.2 Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor or their subcontractors or suppliers.

4.4.3 If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of City, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times.

4.4.4 Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor or Contractor's subcontractors or suppliers.

4.4 Progress Schedules

4.4.1 Contractor shall develop a progress schedule and submit to the Engineer for review and comment before starting Work on the Site. The Contractor shall modify the schedule in accordance with the comments provided by the Engineer.

4.4.2 The Contractor shall update and submit the progress schedule to the Engineer each month. The City may withhold payment if the Contractor fails to submit the schedule.

ARTICLE 5 CONTRACT PRICE

5.1 Payment

5.1.1 Contractor hereby agrees with the City to commence and complete the Work for the sum of Sixty Eight Thousand Dollars and 00/100 (\$68,000.00) for all services associated with the Work as shown on the drawings labeled “[Name of Project]” to complete the Project, under the terms stated in the standard General Requirements, as modified and identified in the Contract Documents (see Project Manual). All invoices submitted to City by Contractor shall list in detail the services provided.

5.2 Further, in accordance with the Contract Documents, Contractor agrees, at its own proper cost and expense, to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the Project in accordance with the Bid Documents and General Conditions, as modified, and prices stated in these specifications, which include any maps, plats, blue prints, and other drawings and printed or written explanatory matter thereof, all of which are made a part hereof and collectively constitute the Contract.

5.2 Payment Procedure

5.2.1 The basis for progress payments will be incorporated into a form of Application for Payment acceptable to Engineer. Engineer will process Applications for Payment. Progress payments for Unit Price Work will be paid for monthly for each unit of Work completed during that pay period.

5.2.2 Payment will be made in an amount equal to the total of all extended prices for actual Work completed. The extended price is determined by multiplying the unit price times the actual quantity of that Work item completed. The Engineer will determine actual quantities installed.

5.2.3 The City agrees to pay the Contractor in current funds for the Work performed under the Contract, subject to additions and deductions, as provided in the EJCDC Standard General Conditions, as modified.

ARTICLE 6 INSURANCE AND BOND

6.1 Insurance

6.1.1. Before starting Work, Contractor shall, at Contractor’s sole cost and expense, procure and maintain for the duration of this Contract proper and complete liability insurance in amounts not less than the following:

General Liability	\$2,000,000
Workers’ Compensation	Statutory
Employer’s Liability	

Bodily Injury, each Accident	\$ 1,000,000
Bodily Injury By Disease, each Employee	\$ 1,000,000
Bodily Injury/Disease Aggregate	\$ 1,000,000
Commercial General Liability	
General Aggregate	\$ 4,000,000
Products - Completed Operations Aggregate	\$ 1,000,000
Personal and Advertising Injury	\$ 1,000,000
Each Occurrence (Bodily Injury and Property Damage)	\$ 1,000,000
Automobile Liability herein:	
Bodily Injury:	
Each Person	\$ 1,000,000
Each Accident	\$ 1,000,000
Property Damage:	
Each Accident	\$ 1,000,000
Excess or Umbrella Liability:	
Per Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000
Contractor's Pollution Liability:	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000

6.2 All insurance policies required to be purchased and maintained will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the insured and additional insured.

6.3 Automobile liability insurance provided by Contractor shall provide coverage against claims for damages because of bodily injury or death of any person or property damage arising out of the Contractor's, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.

6.4 Contractor's commercial general liability policy shall be written on the most ISO commercial general liability occurrence form and include the following coverages and endorsements:

6.4.1 Products and completed operations coverage maintained for three years after final payment;

6.4.2 Blanket contractual liability coverage to the extent permitted by law;

6.4.3 Broad form property damage coverage; and

6.4.4 Severability of interest; underground, explosion, and collapse coverage; personal injury coverage.

6.5 The Contractor's commercial general liability and automobile liability, umbrella or excess, and pollution liability policies shall include and list City and Engineer and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each as additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis.

6.5.1 Additional insured endorsements will include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to City that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.

6.5.2 Contractor shall provide ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent for design professional additional insureds.

6.6 Umbrella or excess liability insurance shall be written over the underlying employer's liability, commercial general liability, and automobile liability insurance. Subject to industry standard exclusions, the coverage afforded shall be procured on a "follow the form" basis as to each of the underlying policies. Contractor may demonstrate to City that Contractor has met the combined limits of insurance (underlying policy plus applicable umbrella) specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policies and an umbrella or excess liability policy.

6.7 The Contractor shall provide property insurance covering physical loss or damage during construction to structures, materials, fixtures, and equipment, including those materials, fixtures, or equipment in storage or transit.

6.8 If Contractor has failed to obtain and maintain required insurance, City may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise City's termination rights under Article 9.

6.9 Contractor shall provide a Performance Bond equaling the total amount of the bid, (pursuant to Ark. Code Ann. §§ 18-44-503 and 22-9-401. Additionally, the Contractor shall provide a Maintenance Bond, equaling 50% of the Street Improvements within the Right-of-Way (ROW) for a period of two (2) years.

ARTICLE 7 CONTRACTOR'S RESPONSIBILITIES

7.1 Supervision and Superintendence

7.1.1 Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, safety, and procedures of construction.

7.1.2 Contractor shall assign a competent resident superintendent who is to be present at all times during the execution of the Work. This resident superintendent shall not be replaced without written notice to and approval by the City and Engineer except under extraordinary circumstances.

7.1.3 Contractor shall at all times maintain good discipline and order at the Site.

7.2 Other Work at the Site

7.2.1 In addition to and apart from the Work of the Contractor, other work may occur at or

adjacent to the Site. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of City, any other contractor, or any utility City performing other work at or adjacent to the Site.

7.3 Services, Materials, and Equipment

7.3.1 Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.

7.3.2 All materials and equipment incorporated into the Work shall be new, of good quality and shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise may be provided in the Contract Documents.

7.4 Subcontractors and Suppliers

7.4.1 Contractor may retain subcontractors and suppliers for the performance of parts of the Work. Such subcontractors and suppliers must be acceptable to City

7.5 Quality Management

7.5.1 Contractor is fully responsible for the managing quality to ensure Work is completed in accordance with the Contract Documents.

7.6 Licenses, Fees and Permits

7.6.1 Contractor shall pay all license fees and royalties and assume all costs incident to performing the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others.

7.6.2 Contractor shall obtain and pay for all construction permits and licenses unless otherwise provided in the Contract Documents.

7.7 Laws and Regulations; Taxes

7.7.1 Contractor shall give all notices required by and shall comply with all local, state, and federal Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither City nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

7.7.2 Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless City and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages if Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations.

7.7.3 Contractor shall pay all applicable sales, consumer, use, and other similar taxes Contractor is required to pay in accordance with Laws and Regulations.

7.8 Record Documents

7.8.1 Contractor shall maintain one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved shop drawings in a safe place at the Site. Contractor shall annotate them to show changes made during construction. Contractor shall deliver these record documents to Engineer upon completion of the Work.

7.9 Safety and Protection

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

7.9.2 Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

- .1 All persons on the Site or who may be affected by the Work;
- .2 All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
- .3 Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of construction.

7.9.3 All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, or anyone for whose acts the Contractor may be liable, shall be remedied

by Contractor at its expense (except damage or loss attributable to the fault of Contract Documents or to the acts or omissions of City or Engineer and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor).

7.9.4 Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.9.5 In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor shall act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.10 Shop Drawings, Samples, and Other Submittals

7.10.1 Contractor shall review and coordinate the shop drawing and samples with the requirements of the Work and the Contract Documents and shall verify all related field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information.

7.10.2 Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.

7.10.3 With each submittal, Contractor shall give Engineer specific written notice, in a communication separate from the submittal, of any variations that the shop drawing or sample may have from the requirements of the Contract Documents.

7.10.4 Engineer will provide timely review of shop drawings and samples.

7.10.5 Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs.

7.10.6 Engineer's review and approval of a separate item does not indicate approval of the assembly in which the item functions.

7.10.7 Contractor shall make corrections required by Engineer and shall return the required

number of corrected copies of shop drawings and submit, as required, new samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

7.10.8 Shop drawings are not Contract Documents.

7.11 Representations, Warranties and Guarantees

7.11.1 The Contractor warrants that:

.1 Contractor warrants and guarantees to City that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.

.2 Contractor has full power and authority to enter into this Contract and to carry out the Project contemplated by this Contract.

.3 The Contractor warrants that Contractor will comply with all laws applicable to the performance of the Project under this Contract.

.4 The Contractor warrants that Contractor's execution, delivery, and performance of this Contract will not constitute: (i) a violation of any judgment, order, or decree binding on Contractor; (ii) a breach under any contract by which Contractor is bound; or (iii) an event that would, with notice or lapse of time, or both, constitute such a breach.

.5. The Contractor warrants that the Project will be performed with the degree of skill and care that is required by current, good, and sound professional procedures and practices, and in conformance with generally accepted professional procedures and industry standards prevailing at the time the Project is performed, and that all work on the Project meet the specifications set forth herein. Contractor further represents and warrants that Contractor and all personnel used to perform the Project, including permitted subcontractors, possess the knowledge, skill, and experience necessary to perform the Project.

.6 The Contractor warrants that Contractor has, and shall maintain in effect for the duration of this Contract, all licenses, permits qualifications, and approvals of whatsoever nature which are legally required for Contractor to complete the Project. **If Contractor *does not* have a current business license in North Little Rock or another city in Arkansas, Contractor must obtain a North Little Rock Business License from the North Little Rock City Clerk prior to executing this Agreement. If Contractor *does* have a current business license from another**

city in Arkansas, Contractor shall provide a copy of such license at the time Contractor submits the executed Agreement. Contractor shall also ensure that all permitted subcontractors are similarly licensed and qualified.
Contractor shall also ensure that all permitted subcontractors are similarly licensed and qualified.

7.12 Correction Period

7.12.1 If within one year after the date of substantial completion, any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly and without cost to City, correct such defective Work.

7.13 Indemnification

7.13.1 To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless City and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts they may be liable.

ARTICLE 8 CITY'S RESPONSIBILITIES

8.1 City's Responsibilities

8.2 Except as otherwise provided in the Contract Documents, City shall issue all communications to Contractor through Engineer.

8.3 City shall make payments to Contractor as provided in this Contract.

8.4 City shall provide Site and easements required to construct the Project.

8.5 If City intends to contract with others for the performance of other work at or adjacent

to the Site, unless stated elsewhere in the Contract Documents, City shall have sole authority and responsibility for such coordination.

8.6 The City shall be responsible for performing inspections and tests required by applicable codes.

8.7 The City shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. City will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.8 While at the Site, City's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which City has been informed.

8.9 City shall furnish copies of any applicable City safety programs to Contractor.

ARTICLE 9 ENGINEER'S STATUS DURING CONSTRUCTION

9.1 Engineer's Status

9.2 Engineer will be City's representative during construction. The duties and responsibilities and the limitations of authority of Engineer as City's representative during construction are set forth in this Contract.

9.3 Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any subcontractor, any supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

9.4 Engineer will make visits to the Site at intervals appropriate to the various stages of construction. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work.

9.5 Engineer has the authority to reject Work if Contractor fails to perform Work in accordance with the Contract Documents.

9.6 Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work.

9.7 Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

ARTICLE 10 CHANGES IN THE WORK

10.1 Authority to Change the Work

10.2 Without invalidating the Contract and without notice to any surety, City may, at any time or from time to time, order additions, deletions, or revisions in the Work, in writing.

10.3 Change Orders

10.3.1 City and Contractor shall execute appropriate Change Orders covering:

.1 Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; provided, however, that any increase in Contract Price has been duly appropriated by the City Council and authorized;

2. Changes in the Work which are: (a) ordered by City or (b) agreed to by the parties or (c) resulting from the Engineer's decision, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and

3. Changes in the Contract Price or Contract Times or other changes which embody the substance of any final binding results under Article 12.

10.4 If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 11 DIFFERING SUBSURFACE OR PHYSICAL CONDITIONS

11.1 Differing Conditions Process

11.1.1 If Contractor believes that any subsurface or physical condition including but not limited to utilities or other underground facilities that are uncovered or revealed at the Site either differs materially from that shown or indicated in the Contract Documents or is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency), notify City and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

11.1.2 After receipt of written notice, Engineer will promptly:

1. Review the subsurface or physical condition in question;
2. Determine necessity for City obtaining additional exploration or tests with respect to the condition;
3. Determine whether the condition falls within the differing site condition as stated herein;
4. Obtain any pertinent cost or schedule information from Contractor;
5. Prepare recommendations to City regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and
6. Advise City in writing of Engineer's findings, conclusions, and recommendations.

11.1.3 After receipt of Engineer's written findings, conclusions, and recommendations, City shall issue a written statement to Contractor regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.

ARTICLE 12 CLAIMS AND DISPUTE RESOLUTION

12.1 Claims Process

12.1.1 The party submitting a claim shall deliver it directly to the other party to the Contract and the Engineer promptly (but in no event later than 10 days) after the start of the event giving rise thereto.

12.1.2 The party receiving a claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the claim through the exchange of information and direct negotiations. All actions taken on a claim shall be stated in writing and submitted to the other party.

12.1.3 If efforts to resolve a claim are not successful, the party receiving the claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the claim within 45 days, the claim is deemed denied.

12.1.4 If the dispute is not resolved to the satisfaction of the parties, City or Contractor shall give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction unless the City and Contractor both agree to submit the dispute to mediation, prior to any litigation. In that case, an alternative dispute resolution firm located in Pulaski County, Arkansas, agreed upon by the parties, shall conduct mediation. The parties shall share the costs of mediation equally.

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION OF DEFECTIVE WORK

13.1 Tests and Inspections

13.1.1 City and Engineer will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access.

13.1.2 Contractor shall give Engineer timely notice of readiness of the Work for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.

13.1.3 If any Work that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense.

13.2 Defective Work

13.2.1 Contractor shall ensure that the Work is not defective.

13.2.3 Engineer has the authority to determine whether Work is defective, and to reject defective Work.

13.2.4 Prompt notice of all defective Work of which City or Engineer has actual knowledge will be given to Contractor.

13.2.5 The Contractor shall promptly correct all such defective Work.

13.2.6 When correcting defective Work, Contractor shall take no action that would void or otherwise impair City's special warranty and guarantee, if any, on said Work.

13.2.7 If the Work is defective or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then City may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

ARTICLE 14 - PAYMENTS TO CONTRACTOR

14.1 Progress Payments

14.1.1 The Contractor shall prepare a schedule of values that will serve as the basis for progress payments. The schedule of values will be in a form of application for payment acceptable to Engineer. The unit price breakdown submitted with the bid will be used for unit price work. Break lump sum items into units that will allow for measurement of Work in progress.

14.2 Applications for Payments:

14.2.1 Contractor shall submit an application for payment in a form acceptable to the Engineer, no more frequently than monthly, to Engineer. Applications for payment will be prepared and signed by Contractor. Contractor shall provide supporting documentation required by the Contract Documents. Payment will be paid for Work completed as of the date of the application for payment.

14.2.2 Beginning with the second application for payment, each application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior applications for payment.

14.3 Retainage

14.3.1 The City shall retain 5% of each progress payment until the Work is substantially complete.

14.4 Review of Applications

14.4.1 Within 10 days after receipt of each application for payment, the Engineer will either indicate in writing a recommendation for payment and present the application for payment to City or return the application for payment to Contractor indicating in writing Engineer's reasons for

refusing to recommend payment. The Contractor will make the necessary corrections and resubmit the application for payment.

14.4.2 Engineer will recommend reductions in payment (set-offs) which, in the opinion of the Engineer, are necessary to protect City from loss because the Work is defective and requires correction or replacement.

14.4.3 The City is entitled to impose set-offs against payment based on any claims that have been made against City on account of Contractor's conduct in the performance of the Work, incurred costs, losses, or damages on account of Contractor's conduct in the performance of the Work, or liquidated damages that have accrued as a result of Contractor's failure to complete the Work.

14.5 Contractor's Warranty of Title

14.5.1 Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to City free and clear of (1) all liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by City.

14.6 Substantial Completion

14.6.1 The Contractor shall notify City and Engineer in writing that the Work is substantially complete and request the Engineer issue a certificate of substantial completion when Contractor considers the Work ready for its intended use. Contractor shall at the same time submit to City and Engineer an initial draft of punch list items to be completed or corrected before final payment.

14.6.2. Engineer will make an inspection of the Work with the City and Contractor to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor and City in writing giving the reasons therefor.

14.6.3 If Engineer considers the Work substantially complete or upon resolution of all reasons for non-issuance of a certificate identified in 14.06.B, Engineer will deliver to City a certificate of substantial completion which shall fix the date of substantial completion and include a punch list of items to be completed or corrected before final payment.

14.7 Final Inspection

14.7.1 Upon written notice from Contractor that the entire Work is complete, Engineer will promptly make a final inspection with City and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is

incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.8 Final Payment

14.8.1 Contractor may make application for final payment after Contractor has satisfactorily completed all Work defined in the Contract, including providing all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents and other documents.

14.8.2 The final application for payment shall be accompanied (except as previously delivered) by:

- .1 All documentation called for in the Contract Documents;
- .2 Consent of the surety to final payment;
- .3 Satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to City free and clear of any liens or other title defects, or will so pass upon final payment;
- .4 A list of all disputes that Contractor believes are unsettled; and
- .5 Complete and legally effective releases or waivers (satisfactory to City) of all lien rights arising out of the Work, and of liens filed in connection with the Work.

14.8.3 The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.

14.9 Waiver of Claims

14.9.1 The making of final payment will not constitute a waiver by City of claims or rights against Contractor.

14.9.2 The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against City other than those pending matters that have been duly submitted.

ARTICLE 15 SUSPENSION OF WORK AND TERMINATION

15.1 City May Suspend Work

15.1.1 At any time and without cause, City may suspend the Work or any portion thereof for a period of not more than 60 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, upon submitting documentary evidence of loss directly attributable to any such suspension, to the satisfaction of City,

15.2 City May Terminate for Cause

15.2.1 Contractor's failure to perform the Work in accordance with the Contract Documents or other failure to comply with a material term of the Contract Documents will constitute a default by Contractor and justify termination for cause.

15.2.2 If Contractor defaults in its obligations, then after giving Contractor and any surety ten days written notice that City is considering a declaration that Contractor is in default and termination of the Contract, City may proceed to:

- .1 Declare Contractor to be in default, and give Contractor and any surety notice that the Contract is terminated; and
- .2 Enforce the rights available to City under any applicable performance bond.

15.2.3 City may not proceed with termination of the Contract under Paragraph 15.2 if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.

15.2.4 Subject to the terms and operation of any applicable performance bond, if City has terminated the Contract for cause, City may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which City has paid Contractor but which are stored elsewhere, and complete the Work as City may deem expedient.

15.2.5 In the case of a termination for cause, if the cost to complete the Work, including related claims, costs, losses, and damages, exceeds the unpaid contract balance, Contractor shall pay the difference to City.

15.3 City May Terminate for Convenience

15.3.1 Notwithstanding any other provision of this Contract, upon seven days written notice to Contractor, the City may, without cause and without prejudice to any other right or remedy of City, terminate the Contract. This right includes, but is not limited to, termination due to non-appropriation of funds in sufficient amounts to discharge such obligation; such failure (i) shall act to terminate this Contract at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Contract, including any sub-agreement, attachment, schedule, or exhibit thereto, by the City. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance and budget and the approval of availability of sufficient funds for the performance of fiscal obligations arising under this Contract. In such case, Contractor shall be paid for, without duplication of any items:

- .1 Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination;
- .2 Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work; and
- .3 Other reasonable, documented expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.

15.4 Contractor May Stop Work or Terminate

15.4.1 If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by City or under an order of court or other public authority, or (2) City fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to City, and provided City does not remedy such suspension or failure within that time, either stop the Work until payment is received, or terminate the Contract and recover payment from the City.

ARTICLE 16 CONTRACTOR'S REPRESENTATIONS

16.1 Contractor's Representations

16.1.1 In order to induce City to enter into this Contract Contractor makes the following representations:

- .1 Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- .2 Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- .3 Contractor is familiar with and is satisfied as to all federal, state and local laws, regulations, and ordinances that may affect cost, progress, and performance of the Work. All Work shall be completed in accordance with all applicable federal, state, and local laws, regulations, and ordinances.
- .4 Contractor has carefully studied all: (1) drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities), if applicable, which have been provided as described in paragraph 5.03 of the EJCDC Standard General Conditions of the Construction Contract, as modified and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which

has been identified in the General Conditions, if applicable, as provided in paragraph 5.06 of the EJCDC Standard General Conditions of the Construction Contract, as modified.

.5 Contractor has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by Contractor, and safety precautions and programs incident thereto.

.6 Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

.7 Contractor is aware of the general nature of work to be performed by City and others at the Site that relates to the Work as indicated in the Contract Documents.

.8 Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

.9 Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

.10 The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 17 DEFINITIONS

17.1 Addenda—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

17.2 Agreement—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.

17.3 Application for Payment—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Document.

17.4 Change Order—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.

17.5 Claim – A dispute between Contractor and City arising from the Work seeking resolution of a contractual issue.

17.6 Contract—The entire and integrated written contract between Owner and Contractor concerning the Work.

17.7 Contract Documents—Those items so designated in the Agreement, and which together comprise the Contract.

17.8 Contract Price—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.

17.9 Contract Times—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.

17.10 Contractor—The individual or entity with which Owner has contracted for performance of the Work.

17.11 Drawings—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.

17.12 Effective Date of the Contract—The date, indicated in the Agreement, on which the Contract becomes effective.

17.13 Electronic Means—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

17.14 Engineer—The individual or entity named as such in the Agreement.

17.15 Field Order—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.

17.16 Hazardous Environmental Condition—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.

.1 The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.

.2 The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.

.3 The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.

17.17 Laws and Regulations; Laws or Regulations—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

17.18 Liens—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.

17.19 Notice to Proceed—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.

17.20 Owner—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.

17.21 Progress Schedule—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.

17.22 Project—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

17.23 Samples—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.

17.24 Schedule of Values—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

17.25 Shop Drawings—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

17.26 Site—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.

17.27 Specifications—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

17.28 Subcontractor—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

17.29 Submittal—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.

17.30 Substantial Completion—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion of such Work.

17.31 Supplier—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

17.32 Underground Facilities—All active or not-in-service underground lines, pipelines,

conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility

17.33 Unit Price Work—Work to be paid for on the basis of unit prices.

17.34 Work—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

17.35 Work Change Directive—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

ARTICLE 18 MISCELLANEOUS

18.1 Terms

18.1.1 Terms used in this Contract will have the meanings indicated in the standard General Conditions of the Construction Contract, as modified.

18.2 Restrictions on Public Improvement Contracts

18.2.1 In accordance with the Bid Documents, all bid documents related to public improvements exceeding \$75,000 in value must include a statement that encourages participation of small, minority, and women's business enterprises.

18.2.2 Contractor, in accordance with Ark. Code Ann. §§ 18-44-503 and 22-9-401, must furnish a surety bond in an amount equal to the contract price.

18.2.3 In accordance with Ark. Code Ann. § 22-9-601, et seq., Contractor is subject to the retainage provisions which allows the City to retain five percent (5%) of payments until final project completion.

18.2.4 Contractor acknowledges that a public right-of-way is an easement used for ingress and egress to property. These easements are held by the City for the benefit of the public at large. As part of any public improvement contract performed in or about public rights-of-way, the City

requires and Contractor agrees that such rights-of-way will be repaired, to the extent possible, to the condition prior to the performance of work.

18.3 Choice of Law

18.3.1 The parties hereto agree that this Contract shall be construed under Arkansas law, excluding its conflict of laws rules. The parties further agree that proper jurisdiction and venue for any cause of action arising from this Contract shall be vested in either the U.S. District Court for the Eastern District of Arkansas or the Circuit Court of Pulaski County, Arkansas.

18.4 Non-Waiver

18.4.1 A. No delay or failure to exercise any right under this Contract shall impair any such right or be construed to be a waiver thereof. No waiver shall be effective unless in writing signed by the party waiving. A waiver of a right on one occasion shall not be deemed to be waiver of such right on any other occasion. A waiver of a right on one occasion shall not be deemed to be a waiver of any other right on that occasion.

18.5 No Assignment

18.5.1 The Project to be performed pursuant to this Contract is personal in nature, and Contractor may not, voluntarily or by operation of law, assign or transfer any of its rights or obligations under this Contract without the prior written consent of the City.

18.6 Merger

18.6.1 This Contract constitutes the full understanding of the parties, a complete allocation of risks between them and a complete and exclusive statement of the terms and conditions of their agreement, related to the services provided hereunder. All prior agreements, negotiations, dealings and understandings, whether written or oral, regarding the subject matter hereof, are superseded by and merged into this Contract.

18.7 Modification

18.7.1 No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary the terms or conditions of the Contract shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification shall be effected by the acknowledgment or acceptance of any forms containing terms or conditions or variance with or in addition to those set forth in this Contract.

18.8 Severability

18.8.1 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon City and Contractor, who agree that the Contract Documents shall be

reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

18.9 Cumulative Remedies

18.9.1 The duties and obligations imposed by this Contract and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.10 Limitation of Damages

18.10.1 Neither City, Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.11 Survival of Obligations

18.11.1 All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

18.13 Contractor's Certifications

18.13.1 Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract.

18.14 No Presumption against Drafter

18.14.1 Each of the parties hereto has jointly participated in the negotiation and drafting of this Contract. In the event an ambiguity or a question of intent or interpretation arises, this Contract shall be construed as if drafted jointly by each of the parties hereto and no presumptions or burdens of proof shall arise favoring any party by virtue of the authorship of any provisions of this Contract.

18.15 Counterpart Execution

18.15.1 This Contract may be executed in two or more counterparts, each of which is deemed as original but all constitute one and the same instrument. An original signature transmitted by facsimile or other electronic means shall be deemed to be original. A party, with the intent to be bound by or authenticate this Contract, may use an electronic or digital signature method, which is: (a) unique to the person using it; (b) capable of verification; (c) under the sole control of the person using it; and (d) linked to data in such a manner that if the data are changed the electronic signature is invalidated.

18.16 Filing. This document shall be filed in the official records of the City Clerk of the City of North Little Rock, Arkansas. Either party may additionally file this document in any other governmental office deemed appropriate; however, the parties waive all claims and defenses in law or equity based upon such additional filing.

[Signatures on the Next Page]

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

City of North Little Rock
By: Terry C. Hartwick
Terry C. Hartwick, Mayor
7-25-23
Date

100a Grass Master, LLC
By: Bobby Bell, Jr.
Bobby Bell, President
7/12/23
Date

ATTEST:
Diane Whitbey
Diane Whitbey, City Clerk
7/28/2023
Date

Contract approved as to form by:

City of North Little Rock, Arkansas

Amy Beckman Fields
City Attorney

BY: Maise-Bernarda Miller
Deputy City Attorney
July 21, 2023
Date



DELTA GRASSMASTERS, LLC

Providing The Latest Horticulture Practices To The Lower Mississippi Delta Region Of Arkansas



TO: David Cook

Date: 1/24/2023

Project: McCain Median Landscaping Phae II

Chane Order #00001

QUANTITY	DESCRIPTION	UNIT COST	LINE TOTAL
1	Irrigation material increase also additional wire, pipe and fitting the irrigation controller was not shown on the drawings neither was the concrete pad + labor.	\$10,000.00	\$10,000.00
348 cy	Topsoil increases from - \$5.00 - \$7.00	\$2.00	\$696.00
676 sy	Bermuda Sod - \$1.60-\$2.00	.40	\$270.40
1	Demobilization/Mobilization	\$5,000	\$5,000.00
1	Restocking & Storage Fee for plants, trees, shrubs, etc.	\$10,000	\$10,000.00
BID SUBTOTAL	\$25,966.40		
		TAXES 9.5%	-
		BID TOTAL	25,966.40