

# TOWN OF CANTON



## INVITATION FOR BID

### Mills Pond Park Splash-Pad Design/Build Project Canton, Connecticut

**BIDS WILL BE RECEIVED** in the Office of the Chief Administrative Officer, Canton Town Hall, 2nd Floor, 4 Market Street Collinsville, CT until 2:00 pm local time on January 12, 2023, at which time all bids will be publicly opened in the second floor Conference Room of the Canton Town Hall.

Legal Notice  
Town of Canton, CT  
Invitation to Bid  
**Mills Pond Park Splash-Pad Design/Build Project**

The Town of Canton, through its Chief Administrative Officer (“CAO”), is soliciting bids for an appropriate and qualified company to provide Design/Build services for the replacement of the existing Mills Pond Park Wading Pool with a new Splash-Pad. The project location is Mills Pond Park, 14 East Hill Road, Canton CT. The Design-Builder shall be responsible for furnishing design, engineering, and construction services for the satisfactory completion of the Project. The cost of the work shall include all fees, material, fixed equipment, labor and services necessary, including design and engineering, to produce the construction required by the Contract as further described in the General Specifications. The General Contractor will be responsible for establishing a professional “design-build” team and responding to this RFP. The team should consist of professionals (licensed where required) in the areas of splash pad design, splash pad construction, site design, and geo-technical, along with various subcontractors as necessary.

There will be a non-mandatory pre-bid conference on December 19, 2022, at 10:00 a.m. at Mills Pond Park, 14 East Hill Road Canton, CT. One (1) original and one (1) copies of sealed bids for the above-named Invitation must be received in the Office of the Chief Administrative Officer, Canton Town Hall, 2nd Floor, 4 Market Street Collinsville, CT by 2:00 PM local time on January 12, 2023 at which time all bids will be publicly opened in the second floor Conference Room of the Canton Town Hall. The Town of Canton will reject bids received after that date and time.

The Bid package and any applicable addendum may be obtained on the Town's website, [www.townofcantonct.org](http://www.townofcantonct.org), under “Request for Proposals”.

Bidders that find discrepancies and/or errors in or between specifications, quantities, and other matters, must immediately notify the Project Administrator in writing not less than five (5) days before the scheduled bid opening.

No bid shall be withdrawn before sixty (60) calendar days after the date of the bid opening. The Town of Canton, CT reserves the right to reject any and all bids and to waive any informality in the bids received.

Dated at Collinsville this 29th day of November, 2022

Robert Skinner Town of Canton, Chief Administrative Officer

The Town of Canton is an Equal Opportunity – Affirmative Action Employer.

## TABLE OF CONTENTS

### Page

#### **GENERAL INFORMATION**

1	Title Page (Front Cover)
2	Invitation to Bid
3	Table of Contents

#### **BIDDING REQUIREMENTS**

5	Instruction to Bidders
54	Bid Proposal
56	Bid Prices
57	Schedule of Bid Prices
59	Non Collision Affidavit
62	Legal Status
66	Bidder Qualifications

#### **WAGE AND PAYROLL REQUIREMENTS**

15	Contractor/Bidder's Responsibility Regarding Prevailing Wage Law
----	--

#### **SMALL AND MINORITY OWNED BUSINESS REQUIREMENTS**

16	Small and Minority Owned Business Set-Aside Laws in Connecticut Contractor/Bidder's Responsibility Regarding Inclusion of Small and Minority Owned Businesses in the Contract Work
----	--

#### **CONTRACT FORMS**

17	Agreement
21	Performance Bond
23	Labor and Materials Bond

#### **GENERAL CONDITIONS**

25	Article 1:	Definitions
26	Article 2:	Progress and Submission Schedules,; Preconstruction Conference; Time of Starting the Work
27	Article 3:	Correlation, Interpretation and Intent of Contract Documents
29	Article 4:	Copies of Documents and Record Documents
29	Article 5:	Separate Contracts
29	Article 6:	Subcontractors
30	Article 7:	Materials, Equipment and Labor; Or Equal Clause
30	Article 8:	Patent Fees and Royalties
30	Article 9:	Permits, Laws and Regulations
31	Article 10:	Availability of Lands; Physical and Subsurface Conditions
31	Article 11:	Owner's Control
32	Article 12:	Authority and Duties of Inspectors
32	Article 13:	Tests and Inspections

33	Article 14:	Contractor's Supervision and Superintendence
33	Article 15:	Safety and Protection; Emergencies
34	Article 16:	Access to the Work
34	Article 17:	Change in the Work
35	Article 18:	Change Orders
36	Article 19:	Change of the Contract Time
37	Article 20:	Warranty and Guarantee; Correction, Removal or Acceptance of Defective Work
38	Article 21:	Applications for Progress Payments
38	Article 22:	Certificates of Completion and Final Payment
39	Article 23:	Waivers of Claims and Continuing Obligations
40	Article 24:	Indemnification
41	Article 25:	Cleaning Up
41	Article 26:	Owner's Right to Stop or Suspend Work
41	Article 27:	Owner's Right to Terminate
42	Article 28:	Contractor's Right to Stop Work or Terminate
42	Article 29:	Provisions Required by Law Deemed Inserted
43	Article 30:	Contract Security
43	Article 31:	Time for Completion and Liquidated Damages
44	Article 32:	Sanitary Facilities
44	Article 33:	Nondiscrimination Clause
44	Article 34:	Wage Scale Provisions
44	Article 35:	Work by Others
44	Article 36:	Mediation of Disagreements
44	Article 37:	Applicable Law
45	Article 38:	Alteration and Amendments
45	Article 39:	Notice
45	Article 40:	Shop Drawings and Samples
46	Article 41:	Maintenance Bond
46	Article 42:	Progress Prints and As Built Drawings
46	Article 43:	Electrical Energy
46	Article 44:	Standard Specifications
47	Article 45:	Call before You Dig Requirements
47	Article 46:	Protection of the Work
47	Article 47:	Dust Control and Cleanup
47	Article 48:	Construction Materials
48	Article 49:	Construction Staking, Line, and Grade
48	Article 50:	Work Procedure
48	Article 51:	Prompt Completion of Work
49	Article 52:	Work Interruptions
49	Article 53:	Temporary Suspension of Work
49	Article 54:	Noise
50	Article 55:	Protection of Adjoining Properties
50	Article 56:	Insurance

## INSTRUCTIONS TO BIDDERS

### INTRODUCTION

The Town of Canton (the "Town") is soliciting bids for the Mills Pond Park Splash-Pad Project. This Invitation is not a contract offer.

The scope of this project is described more particularly in the Invitation for Bid and the bid proposal that are a part of this bid package.

The location, general characteristics and principal details of the work are indicated in this invitation for bid and other references noted on this document.

Interested parties should submit a bid response in accordance with the requirements and directions set forth in this bid package. Bidders may not contact any Town employee or official concerning this Invitation other than the Town's Project Administrator as set forth in the attached documents. A bidder's failure to comply with this requirement may result in disqualification. The Town will return unopened any bid received after the date and time of bid opening.

If there are any conflicts between the provisions of these Instructions to Bidders and any other document(s) comprising this bid package, these Instructions to Bidders shall prevail.

### KEY DATES

Invitation to Bid issued: November 29, 2022

Pre-Bid Conference: December 19, 2022 @10:00 am, Mills Pond Park, 14 E. Hill Rd. Canton (**non-mandatory**)

Bid Opening: January 12, 2023 @ 2:00 pm

.....

### SCHEDULING THE WORK

Work under this contract shall reach substantial completion within sixty (60) calendar days [unless otherwise modified or authorized by the Project Administrator] from the day the Contractor starts work, which date shall not be more than ten (10) calendar days from the date of written Notice To Begin Work, unless such notice specifically instructs the Contractor to begin work at a later date. Calendar days in this contract shall mean each consecutive day including Saturdays, Sundays and Legal Holidays. No extensions of time will be allowed for adverse weather conditions unless the number of days of inclement weather is substantially greater or conditions more severe than the average for the calendar period as recorded by a recognized weather observation agency and the Contractor provides documentation at the end of each calendar month identifying these weather delays. Work on this project shall not be performed on Saturdays, Sundays or Legal Holidays except by written consent and direction of the Owner.

Work shall proceed in an orderly fashion to minimize inconvenience to the town. All contract work, including punch list items, shall reach final

completion within seventy (70) calendar days from the day the contractor starts work.

### CONTINGENCIES

The Town reserves the right to cancel this bid process and any resulting Contract at any time if the Town deems such action to be in its best interests, including but not only if either of the following conditions exists:

- The Town, through changes in its requirements or methods of operation, no longer has a need for the subject matter of this Invitation; or
- The Town is not satisfied with the work under the Contract, or the successful bidder fails to comply with any of the Contract's terms and conditions.

### OBTAINING BID PACKAGE

The bid package – i.e., each of the documents listed on the page preceding these Instructions and collectively referred to as the “Invitation” – may be obtained on the Town's website, [www.townofcantonct.org](http://www.townofcantonct.org), under “Request for Proposals.”

### BID SUBMISSION INSTRUCTIONS

Bids must be in the Town office identified above prior to the date and time the first bid is scheduled to be opened publicly. Postmarks prior to the bid opening date and time do **NOT** satisfy this condition. The Town will **NOT** accept corrections and/or modifications received after the first bid is opened publicly. Bids may not be withdrawn after bid opening, and bids must remain in effect for sixty (60) calendar days after bid opening, even if the bidder discovers errors in the bid after opening.

One (1) original bid & one copy must be submitted on the accompanying Bid Form and in sealed, opaque envelopes clearly labeled with the bidder's name, the bidder's address, the words "BID DOCUMENTS," and the Bid Title and Bid Opening Date, to prevent opening prior to the bid opening date. The bidder should also complete the following forms and submit as part of the bid submission:

- Disclosures
- Legal Status
- Bid Security
- Non-Collusion Affidavit
- Bidder Qualifications

The Town will reject, and not accept, bids submitted in unmarked envelopes that the Town opens in its normal course of business. The Town may, but shall not be required to, return such bid and inform the bidder that the bid may be resubmitted in a sealed envelope properly marked as described above.

Bids must be submitted on the prescribed form and all blank spaces for bid prices must be completed and all prices shall be stated in both words and figures. Bid prices shall include all labor, materials, equipment, tools, transportation, and incidentals thereto necessary to perform the work in accordance with the Contract Plans and Specifications and First Class Work of the type being bid. The person signing the bid must initial errors, alterations or

corrections on both the original bid and all required copies. Ditto marks or words such as "SAME" shall not be used in the Bid Form.

Bids may be withdrawn personally or in writing provided that the Town receives the withdrawal prior to the time and date fixed for the bid opening. Bids are considered valid for sixty (60) calendar days after bid opening, to permit the Town the time to review the bids and to investigate the bidders' qualifications prior to awarding the bid. Bidders may not withdraw, cancel or modify their bid for a period of sixty (60) calendar days after the bid opening or the Bidder shall forfeit its Bid Security.

An authorized person representing the legal entity of the bidder must sign the bid.

### UNIT PRICES AND LUMP SUM PRICES

The unit prices for each of the several items in the bid shall include the prorated share of overhead and profit so that multiplying the quantity shown for each item by the unit price bid represents the total bid for that item. The Town may reject any bid not conforming to this requirement. **Bidders should note this provision because, if conditions make it necessary for the Town to revise the quantities, no limit shall be fixed for such increased or decreased quantities, nor extra compensation allowed.**

Lump sum prices for each of the several items in the bid shall include its prorated share of overhead, profit, and all costs associated with that item. The lump sum price represents the **entire compensation** that the Town shall pay for **all** of the work associated with the item. The Town retains the right, as best serves the Town, to select all or part of the bid items as part of the award of this bid.

### QUESTIONS

Questions concerning the bid process and procedures are to be in writing and directed only to:

Name: Glenn Cusano – Project Administrator

E-mail: [gcusano@townofcantonct.org](mailto:gcusano@townofcantonct.org)

Bidders may not contact any other Town employee or official concerning this Invitation. A bidder's failure to comply with this requirement may result in disqualification.

If a bidder finds any omission, discrepancy or error in, has questions concerning, or seeks an exception to anything in the documents constituting this Invitation; it should notify the Town as soon as possible but not less than five (5) business days before the date of the bid opening.

The bidder must direct that inquiry to:

Glenn Cusano, email address: [gcusano@townofcantonct.org](mailto:gcusano@townofcantonct.org)

No oral statement of the Town shall be effective or binding to modify any of the provisions of this Invitation.

However, the Town will not make any oral interpretations to any bidder as to the meaning of any bid documents or portions thereof, and no bidder shall rely on any alleged oral interpretation. A bidder shall request an interpretation in writing to:

Glenn Cusano, email address: [gcusano@townofcantonct.org](mailto:gcusano@townofcantonct.org)

## ADDENDUM/ADDENDA

At least three (3) calendar days prior to the bid opening, the Town will post a copy of any and all addendum or addenda on the Town's website, [www.townofcantonct.org](http://www.townofcantonct.org), under "Request for Proposals." Said addendum or addenda; which shall be a part of this Invitation/Bid and the resulting Contract; containing all questions received as provided for above and decisions regarding same. Each bidder is responsible for checking the website to determine if the Town has issued an addendum or addenda and, if so, to complete its bid in accordance with the Invitation as modified by the addendum/addenda.

## COSTS FOR PREPARING BID

This Invitation does not commit the Town to pay any costs incurred by bidders in preparing their responsive bids. Each bidder agrees that all costs it incurs in developing its bid are its sole responsibility.

## OWNERSHIP OF BIDS

All bids submitted become property of the Town.

## FREEDOM OF INFORMATION ACT

All information submitted in a bid or in response to a request for additional information is subject to disclosure under the Connecticut Freedom of Information Act as amended. A bidder's responses may contain financial or other data that it claims constitute proprietary or confidential information or a trade secret. To protect such data from disclosure, a bidder should identify specifically the pages that contain claimed confidential information by visibly marking all such pages of the bid.

## REQUIRED DISCLOSURES AND BIDDER'S QUALIFICATIONS

In its bid each bidder must:

- State its inability to meet any specified requirement of the Invitation;
- Make a complete disclosure of all resolved and pending mediation, arbitration and litigation matters in which the bidder or its principals (regardless of their place of employment) have been involved for the most recent five (5) years;
- Make a complete disclosure of each instance of its or its principals' (regardless of their place of employment) conviction, guilty plea, nolo contendere plea, finding of civil liability or criminal responsibility in any civil action or for any criminal offense, except motor vehicle infractions; and
- Make a complete disclosure of each instance of its or its principals' (regardless of their place of employment) finding of a violation of any state or local ethics standards or other offense arising out of the submission of bids or proposals, or performance of work on public works projects or contracts.



A bidder's acceptability based on these disclosures and any investigation the Town deems necessary to determine a bidder's ability to perform the work described in this Invitation shall lie solely with the Town.

### CONFLICT OF INTEREST

By submitting a bid, a bidder certifies that it has no conflict of interest as defined in the Town's Ordinance # 230 concerning ethics. The Town shall review all bids under this provision and may reject any bid where, in the Town's opinion, the bidder could be in a conflict of interest or could be perceived to be in a possible conflict of interest position if the bidder were to become a party to the Contract.

### DEBARRED CONTRACTORS

The Town will reject any bid from a bidder that is on a debarred contractor list of the United States and/or the State of Connecticut.

### LEGAL STATUS

Each bidder must complete the Bidder's Legal Status Disclosure form and must, if required, have a current license or registration to do business in the State of Connecticut that is on file with the Connecticut Secretary of the State's Office. The Town may, in its sole discretion, request acceptable evidence of any bidder's legal status.

### BID SECURITY

Not Applicable

### PRESUMPTION OF BIDDER'S FULL KNOWLEDGE

At the time the first bid is opened, the Town will presume that each bidder has read and understood each document comprising this Invitation and any addenda posted on the Town's website. A bidder's failure and/or omission to receive or examine any information concerning this Invitation shall in no way relieve it from any aspect of its bid or the obligations related to it.

At the time the first bid is opened, the Town will also presume that each bidder is familiar with and will comply with all federal, state and local laws, ordinances and regulations that in any manner relate to this Invitation and the performance of the work described in it.

By submitting a bid, each bidder represents that it has thoroughly examined and become familiar with the scope of work outlined in this Invitation and it is capable of performing the work to achieve the Town's objectives.

Each bidder shall visit and examine the location of and the routes to be used during the work described in this Invitation and thoroughly familiarize itself with all actual conditions of the property before preparing its bid. The submission of a bid shall be construed as an assurance that such examination has been made, and the Town will not recognize or award claims for compensation for additional labor, equipment or materials for difficulties encountered.

### TAX EXEMPTIONS

The Town is exempt from the payment of federal excise taxes and Connecticut sales and use taxes. Exemption from State sales tax per Conn. Gen. Stat. Chapter 219, § 12-412(1). No exemption certificates are required, and none will

be issued. The successful bidder will be provided the Town of Canton's Federal Tax Exempt #. Bidders shall avail themselves of these exemptions.

### INSURANCE

The successful bidder shall, at its own expense and cost; obtain and keep in force during the entire duration of the work and during the completed operations period that is the subject of this Invitation; the insurance coverage set forth in Article 56 of the General Conditions of these Contract Documents.

### AWARD CRITERIA; SELECTION; CONTRACT EXECUTION

The Town reserves the right to accept the bid that, all things considered, is in the best interests of the Town. Although price will be an important factor, it will not be the only basis for award. Due consideration will also be given to a bidder's experience, references, service, ability to respond promptly to requests, past performance satisfactory to the Town, and other criteria relevant to the interests of the Town, including the bid documents' compliance with the procedural requirements stated in this Invitation.

### LOCAL BIDDER PREFERENCE POLICY

On any item, project or service which value exceeds \$7,500 or which is advertised through a competitive bid process and in which there is a qualified Town Based Resident Bidder, the lowest responsible bidder shall be determined in the following order:

1. A Town Based Resident Bidder which has submitted a bid not more than 10% higher than the lowest responsible bid may be awarded the bid provided such Town Based Resident Bidder agrees to accept the award of the bid at the amount of the lowest responsible bidder.
2. If more than one Town Based Resident Bidder has submitted a bid not more than 10% higher than the lowest responsible bid, the lowest responsible bidder shall be the Town Based Resident Bidder which submitted the lowest bid.
3. Otherwise, the award will go to the lowest responsible bidder who would qualify if there were no Town Based Resident Bidder.

Any local vendor meeting the requirements of a Town Based Resident Bidder, as defined below, responding to the solicitation shall be required to submit a signed Local Bidder Affidavit Form with the bid submittal. Failure to submit an affidavit form, may at the option of the Town, result in disqualification as a local vendor and ineligibility for contract award as a Town Based Resident Bidder.

The term "Town Based Resident Bidder" shall mean any business with a principal place of business located within the Town of Canton. A business shall not be considered to be a Town Based Resident Bidder unless evidence to establish that such business has a bona fide principal place of business in Canton is included with each bid submitted by the business. Such evidence may include documentation of ownership, or a long-term lease on the real estate from which the principal place of business is operated or payment of property taxes on the personal property of the business to be used in the performance of the bid.

The Local Bidder Preference process shall not apply under the following circumstances:

- 1) Professional services contracts which are awarded on subjective criteria in addition to cost.
- 2) Contracts using state, federal or other funds that have regulations disallowing such practice.
- 3) If the qualified Town Based Resident Bidder is not current in the payment of all local taxes.
- 4) Bids made through regional organizations or state agencies such as state contracts, CRCOG or CIRMA, when the product or services offered have already been selected through a competitive process.
- 5) Bids received through a reverse auction process.

The Town will not award the bid to any bidder who is in arrears or in default to the Town on any debt, contract, security or any other obligation. The Town reserves the rights, in its sole discretion: to accept any, all, or any part of bids; to reject any, all, or any part of bids; to waive any non-material deficiencies or clerical errors in the bidding process or bid; and to award the bid that in its judgment will be in the Town's best interests. The Town also reserves the right to award the purchase of individual items under this Invitation to any combination of separate bids or bidders.

All bids will be publicly opened and read aloud as received on the date, at the time, and at the place identified in this Invitation. Bidders may be present at the opening.

The Town may correct, after bidder verification, any mistake in a bid that is obviously a clerical error, such as a price extension or decimal point error. If an error exists in an extension of prices, the unit price shall prevail. In the event of a discrepancy between the price quoted in words and in figures, the words shall control.

The Town will select the bid that it deems to be in the Town's best interest and issue a Notice of Conditional Award of Bid to the successful bidder. The conditional award shall be subject to further discussions with the bidder that are deemed necessary by the Town and to the successful bidder's provision of the documents required by this Invitation and the execution of a Contract in the form contained in this Invitation. The successful bidder's failure to provide each required form or execute the Contract within ten (10) business days of the date of the Notice of Conditional Award of Bid shall be grounds for the Town to declare the bid withdrawn, to call the bid security, and/or to enter into discussions with another bidder.

The Town will post the bid results and award recommendation on the Town's website, [www.townofcantonct.org](http://www.townofcantonct.org), under "Request for Proposals."

The Bid Awarded and Contract Execution dates listed in the instructions to bidders section are anticipated, not certain, dates.

### COLLUSION

Each bidder shall complete the Non Collusion Affidavit that is a part of this Invitation.

Any act(s) of misrepresentation or collusion in connection with a bid may be a basis to disqualify a bid submitted by the bidder responsible for said misrepresentation or collusion. In the event that such conduct is discovered after the execution of the Contract, the Town may terminate the Contract without incurring any liability, penalty, damages or other loss.

#### ADVERTISING

The successful bidder may not name the Town in its advertising, news releases, and promotional efforts without the Town's prior written approval. If it chooses, the successful bidder may list the Town in a statement of references or similar document required as part of a public bid. The Town's permission to the successful bidder to do so is not a statement about the quality of the successful bidder's work or the Town's endorsement of the successful bidder or its work.

#### W-9 FORM

The successful bidder must provide the Town with a completed W-9 form before commencing work.

#### PAYMENTS

Payments will be made within thirty (30) calendar days after the appropriate Town officer receives and approves the invoice, unless otherwise specified in the Technical Specifications.

#### TOWN INSPECTION OF WORK

The Town may inspect the successful bidder's work at all reasonable times. This right of inspection is solely for the Town's benefit and does not transfer to the Town the responsibility for discovering patent, latent, or other defects. The successful bidder has the sole and exclusive responsibility for performing in accordance with the Contract.

#### REJECTED WORK OR MATERIALS

The successful bidder, at its sole cost and expense, shall remove from the Town's premises rejected items, commodities and/or work within 48 hours of the Town's notice of rejection. Immediate removal may be required when safety or health issues are present. If the contractor fails to remove rejected work in a timely manner, the Town may arrange to have such rejected work removed and deduct associated costs from payments due to the contractor.

#### MAINTENANCE AND AVAILABILITY OF RECORDS

The successful bidder shall maintain all records related to the work described in the Invitation for a period of three (3) years after final payment under the Contract or until all pending Town, state and federal audits are completed, whichever is later. Such records shall be available for examination and audit by Town, state and federal representatives during that time.

## REPRESENTATION OF TOWN

In performing the work described in the Invitation, the successful bidder, its agents and employees shall act in an independent capacity and shall not act as officers, employees or agents of the Town.

## SUBCONTRACTING

The successful bidder agrees not to enter into any subcontracting agreement for any or all of the work described in the Invitation without obtaining the Town's prior written consent. All subcontracting shall be subject to the same terms and conditions as are applicable to the successful bidder. The successful bidder shall be fully and solely responsible for the performance of and payments to any subcontractors. The contractor shall not award more than 49% of the contract value to anyone subcontractor.

## COMPLIANCE WITH LAW

The successful bidder shall comply with all applicable laws, regulations, ordinances, codes and orders of the United States, the State of Connecticut and the Town related to its bid and the performance of the work described in the Invitation and these specifications. The successful bidder shall commit no trespass on private property in performing any of the work described in the Invitation. By submitting a bid, the successful bidder covenants that it has complied, and during the term of the Contract will comply, with the obligations under the Immigration Reform and Control Act ("IRCA") and that all employees it assigns to the Contract are authorized for employment in the United States of America. The successful bidder further covenants that it has properly completed, and during the term of the Contract will properly complete, I-9s for all employees assigned to the Contract. The successful bidder agrees to defend, indemnify and hold the Town harmless in the event that any of the successful bidder's employees provided under the Contract is found not to be authorized to work under the law or in the event that there is a determination that the successful bidder has failed to comply with IRCA's obligations, including but not limited to the failure to prepare correctly and maintain I-9s. The successful bidder further agrees to defend, indemnify and hold harmless the Town from and against any and all claims brought against the Town as a result of these obligations, including but not limited to settlement fees, judgments, attorneys' fees and costs. These defense, hold harmless and indemnity obligations shall survive the Contract's termination or expiration.

## LICENSES AND PERMITS

The successful bidder shall, for the term of the Contract, have and provide proof of all permits and licenses required by the Town and/or any other state or federal authority. The successful bidder shall immediately and in writing notify the Town of the loss or suspension of any such license or permit.

## SECURITY: PERFORMANCE, AND PAYMENT

At the time of Contract execution, the successful bidder shall file with the Town security in an amount not less than one hundred percent (100%) of the total bid for, which security shall be for both the satisfactory performance of the work including all labor and materials. Such security shall be in the form of either surety bond(s) or the successful bidder's certified check. The surety bond(s)

shall be prepared in the form of the Performance Bond, and the Labor and Material Payment Bond, made a part of this Invitation, duly executed by the bidder and the surety and shall be subject to the review and approval of the Town's legal counsel. The bidder's surety shall be licensed by the State of Connecticut and listed by the US Department of the Treasury in Circular No. 570. The Town may accept a certified check in lieu of a surety bond, subject to review and approval of the Town's legal counsel. The bidder's bank shall be licensed and insured by the State of Connecticut and the Federal Deposit Insurance Corporation. The failure of the Town's legal counsel to approve the form of such security shall be grounds for the Town to reject the bid. The successful bidder shall provide the Town with such security prior to the start of each Contract year in an amount the Town estimates for the work anticipated for that Contract year. Failure to provide such security shall be grounds to terminate the Contract.

#### NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

During the term of the Contract, the successful bidder agrees to be an equal employment opportunity employer and will not discriminate as to race, color, creed, sex, national origin, marital status, physical or mental disability or any other protected classification under state and federal law.

**END OF INSTRUCTIONS TO BIDDERS**

## WAGE AND PAYROLL REQUIREMENTS

### REQUIREMENTS

#### Prevailing Wage Laws in Connecticut

Conn. Gen. Stat. Section 31-53(g) provides monetary thresholds which must be met before the law is applicable. **The prevailing wage law does not apply where the total cost of all work to be performed by all contractors and subcontractors in connection with new construction of a public works project is less than one-million (\$1,000,000) dollars.** The prevailing wages law does not apply where the total cost of all work to be performed by all contractors and subcontractors in connection with remodeling, refinishing, refurbishing, rehabilitation, alteration or repair of any public works project under one hundred thousand (\$100,000) dollars.

#### Contractor/Bidder's Responsibility Regarding Prevailing Wage Law:

If the Contractor's/Bidder's total contract bid price for all work included under this contract, as listed in the submitted Bid Proposal, is equal to or greater than the limits listed above as applicable under said law; then the Contractor's/Bidder's unit prices and lump sum prices submitted herein and the resulting total contract bid price submitted herein should be based on the applicable Prevailing State Wage Rates; and it will further be the Contractor's/Bidder's responsibility to obtain the current applicable Prevailing Wage Rates from the State of Connecticut – Department of Labor and meet all requirements therein of the Law and the State of Connecticut.

## SMALL AND MINORITY OWNED BUSINESS SET-ASIDE LAWS IN CONNECTICUT

\*The contractor who is selected to perform this project must comply with Connecticut General Statutes, 4a-60, 4a-60a, 4a-60g, and 46a-68b through 46a-68f, inclusive, as amend by June 2015 Special Session Public Act 15-5. An affirmative Action Plan must be filed with and approved by the Commission on Human Rights and Opportunities (CHRO) prior to commencement of construction.

State law requires a minimum of twenty-five (25%) percent of the state-funded portion of the contract for award to subcontractors holding current certification from the Connecticut Department of Administrative Services ("DAS") under the provisions of Connecticut General Statutes 4a-60g as amended. (25% of the work with DAS certified Small and Minority owned businesses and 40% of that work with DAS certified Minority, Women and/or Disabled owned businesses.) The contractor must demonstrate good faith effort to meet the 25% set-aside goals.

For municipal public works contracts and quasi-public agency projects, the contractor must file a written or electronic non-discrimination certification with the Commission on Human Rights and Opportunities. Forms can be found at: [http://www.ct.gov/opm/cwp/view.asp?a.2982&q=3909288topmNav\\_GOD=1806](http://www.ct.gov/opm/cwp/view.asp?a.2982&q=3909288topmNav_GOD=1806)

Contractor/bidder's responsibility regarding inclusion of small and minority owned businesses in the work under this contract

If the Contractor's/Bidder's total contract bid price for all work included under this contract, as listed in the submitted Bid Proposal, is greater than fifty thousand (\$50,000) dollars, then the Contractor's/Bidder's unit prices and lump sum prices submitted herein and the resulting total contract bid price submitted herein should be based on the inclusion of contracts in the amount of 25% of the work with DAS certified Small and Minority owned businesses, and further, 40% of that work [10% of total contract amount] shall be contracted with DAS certified Minority, Women and/or Disabled owned businesses; all meeting the requirements therein of the Law(s) and the State of Connecticut.

**\*NOTE:** CHRO Regulations do not apply to projects funded with ARPA (American Rescue Plan Act of 2021) funds. This project is 100% funded with ARPA funds.



## AGREEMENT

This Agreement (the "Agreement") is entered into the \_\_\_\_\_ day of \_\_\_\_\_ 2022 by and between the Town of Canton, a political subdivision of the State of Connecticut (the "Owner") and \_\_\_\_\_  
\_\_\_\_\_ (the "Contractor").

WHEREAS, the Owner has issued an Invitation for Bids for **Mills Pond Park Splash-Pad Design/Build Project**, Canton, Connecticut (the "Premises"); and

WHEREAS, Contractor submitted a proposal to the Owner on August 15, 2022, for the Work; and

WHEREAS, the Owner and the Contractor desire to enter into a formal Agreement for the performance of the Work;

THEREFORE, in consideration of the recitals set forth above and the mutual promises by the parties below, the parties agree as follows:

1. General. The Contractor agrees to perform the Work in accordance with the Contract Documents (as set forth below). The Contract Documents represent the entire and integrated agreement between the Owner and the Contractor and supersede all prior negotiations, representations or agreements, whether written or oral.
2. Duties. Contractor shall perform the Work described in the Contract Documents except for any work that is specifically prescribed in the Contract Documents to be the responsibility of another person. Contractor shall furnish all labor, equipment, trucks, materials, tools, facilities, supplies, transport, and any other things necessary to carry out the Work in a first-class manner for work of this type.
3. Permits and Standards. Contractor shall, at its own expense, obtain all required permits and agreements from the Town of Canton, federal, state or other governmental authority for performance of the Work in accordance with the standards prescribed by the federal Environmental Protection Agency, the Occupational Safety and Health Administration, NIOSH, the Department of Energy and Environmental Protection of the State of Connecticut and any other federal, state or local government laws and regulations. In the event of a conflict or overlap of any such laws or regulations, the most stringent provisions shall be applicable.
4. Compliance with Laws. Contractor shall comply with all federal, state and local laws, ordinances, regulations and applicable permits governing the Work whether or not such laws and regulations are fully and properly included as part of this Agreement.
5. Schedule. The Work under this Contract will be given to the Contractor using Work Orders. The Work shall be completed within the number of calendar days required to complete each assigned Work Order as agreed to prior to the issuance of the Work Order. The Contractor shall commence with the Work of

any assigned Work Order within ten days after receipt of signed [by the Town] Work Order. The rate of progress shall be such that the work shall be performed and completed in accordance with the contract before the expiration of the time limit stipulated, which time is of the essence of the Agreement. Failure by the Contractor to complete the Work of any Work Order as agreed to by both parties, may be grounds for terminating this Contract

6. Payment. The Owner will pay the Contractor in accordance with the Contract Documents and agreed upon unit prices for Work in place. Payment will be made by the Owner monthly within 30 days after the approval of the Contractor's Application for Payment as provided in the Contract Documents less retainage of five percent (5%).

7. Insurance. The Contractor shall carry and keep in force during the term of this Agreement completed operations period all insurance as more specifically described in the Contract Documents by a company or companies authorized to do business in Connecticut. The Company shall provide certificates of insurance and endorsements or insurance policies specifying such coverage and naming the Town and its officers, agents, employees and volunteers as additional insured prior to the start of the Work and on an annual basis. In the event of any conflict between the insurance requirements set forth below and insurance requirements set forth in other Contract Documents, the requirements in this Agreement shall control.

The Contractor shall provide the following coverages and minimum limits of insurance:

1) Worker's Compensation Insurance:  
Statutory Coverage

Employer's Liability

\$1,000,000 each accident/\$1,000,000 disease-policy limit/\$1,000,000 disease each employee

2) Commercial General Liability:

Including Premises & Operations, Products and Completed Operations, Personal and Advertising Injury, Contractual Liability and Independent Contractors.

Limits of Liability for Bodily Injury and Property Damage

Each Occurrence      \$1,000,000

Aggregate              \$2,000,000

3) Automobile Insurance:

Including all owned, hired, borrowed and non-owned vehicles and pollution

Limit of Liability for Bodily Injury and Property Damage:

Per Accident            \$1,000,000

4) Umbrella

Each Occurrence      \$5,000,000

Aggregate Limit      \$5,000,000

The Contractor and the Contractor's subcontractors, if any, shall cause the commercial liability coverage required by the Contract Documents to include (1) the Town and its officers, agents, volunteers and employees, as additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Town and its officers, agents, volunteers and employees as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations. The Contractor shall, before commencement of its Work, submit to the Town evidence of the aforementioned requirements from itself and its subcontractors, if any, in the form of an additional insured endorsement or insurance policy acceptable to the Town. Failure by the Contractor to provide the endorsements required in this section shall entitle the Town to withhold payment from the Contractor then due or to become due until such time as the endorsements or policies are provided. The insurance (both primary and umbrella coverage's) of the Contractor and the Contractor's subcontractor's, if any, shall be primary to any insurance that may be available to the Town and its officers, agents, employees and volunteers and any insurance available to the Town and its officers, agents, employees and volunteers is secondary and non-contributory. The policies of insurance or endorsements as provided herein shall state that the insurance of the Contractor and the Contractor's subcontractor's, if any, (both primary and umbrella coverage's) shall be primary to any insurance that may be available to the Town and its officers, agents, employees and volunteers and any insurance available to the Town and its officers, agents, employees and volunteers is secondary and non-contributory. The Contractor and the Contractor's subcontractor's, if any, shall cause their insurers to directly provide the Town with thirty (30) days advance notice of cancellation. The Contractor and the Contractor's subcontractor's, if any, shall cause their insurers to directly provide the Town with ten (10) days advance notice of cancellation for non-payment. The insurance obligations provided herein shall survive the termination and/or cancellation and/or full performance of this Agreement

8. Contract Documents. The Contract Documents include, without limitation, the following:

- (i) The Agreement
- (ii) The Owner's Invitation for Bid and Instructions to Bidders
- (iii) Drawings – if included as part of the bid documents
- (iv) The Contractor Bid Proposal
- (v) Specifications and/or Special Provisions
- (vi) General Conditions and documents referenced therein
- (vii) Any modifications issued after the execution of this Agreement.

9. No Assignment. The Contractor shall not subcontract, transfer or assign its obligations under the Contract Documents or any portion thereof without the prior written consent of the Owner. Any assignment or attempted assignment without the Owner's written consent shall not relieve the Contractor of its

obligations under this Agreement and such assignment shall be null and void and have no legal effect.

10. Contractor Personnel Must Be Authorized to Work. The Contractor confirms that it has complied with the obligations under the Immigration Reform and Control Act (IRCA) and that the employees, independent contractors and other personnel it provides under this Agreement are authorized for employment in the United States. The Contractor further confirms that it has properly completed I-9s for all employees assigned to the Owner's place of business. The Contractor agrees to hold harmless and indemnify the Owner in the event that any of the employees or other personnel provided by the Contractor are found not to be authorized to work under the law or in the event that there is a determination that the obligations set forth under IRCA, including, but not limited to, the failure to correctly prepare and maintain I-9s, have not been complied with by the Contractor. The Contractor agrees to indemnify, defend and hold the Owner harmless against any claims brought against the Contractor or the Owner as a result of these obligations, including but not limited to, settlement fees, judgments and attorneys' fees and costs.

11. Compliance with Laws. The Contractor shall perform the Work in compliance with any and all applicable local, state and federal laws or regulations. The Contractor agrees to indemnify, defend and save harmless the Owner and its officers, agents, volunteers and employees, from and against all loss or expense, (including costs and attorneys' fees), arising out of or resulting from the Contractor's failure to perform the Work in accordance with all applicable laws and regulations. The defense and indemnity obligations provided herein shall survive the termination and/or cancellation and/or full performance of this Agreement.

12. Execution. This Agreement may be executed in two or more counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been signed by each of the parties hereto and delivered (including delivery by facsimile) to each of the parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first written above.

Witness: \_\_\_\_\_

By \_\_\_\_\_  
Robert Skinner  
Chief Administrative Officer

Date: \_\_\_\_\_, 2022

Witness: \_\_\_\_\_

By \_\_\_\_\_  
Contractor

Date: \_\_\_\_\_, 2022

**PERFORMANCE BOND**

Bond Number \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENTS:**

That \_\_\_\_\_, as Principal, hereafter called Principal, and \_\_\_\_\_, as Surety, hereinafter called Surety are held and firmly bound unto the Town of Canton as Obligee, hereinafter called Owner, in the amount of \_\_\_\_\_ and \_\_\_\_\_ Dollars (\$\_\_\_\_\_), for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, by these presents.

WHEREAS, Principal has by written Agreement dated \_\_\_\_\_ entered into a Contract with the Owner for:

**“Mills Pond Park Splash-Pad Design/Build Project”**

which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

The Surety hereby waives notice of any alterations or extensions of time made by the Owner.

WHEREAS, Principal shall be, and declared by the Owner to be in default under the Contract, the Owner having performed the Owner’s obligations thereunder, the Surety shall promptly remedy the default, or shall promptly:

1. Complete the Contract in accordance with its terms and conditions; or,
2. Obtain a Bid or Bids for submission to the Owner for completing the Contract in accordance with its terms and conditions, and upon determination by the Owner of the lowest qualified responsible Bidder, arrange for a Contract between the Bidder and the Owner, and make available as Work progresses sufficient funds to pay the cost of completion of the Contract.

Any suit brought under this Bond must be instituted before the expiration of three (3) years from the date on which final payment under this Contract is rendered.

This Bond is issued simultaneously with another Bond in favor of the Town of Canton conditioned for full payment of Labor and Materials.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Owner named herein or the executors, administrators, or successors of the Owner.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(Seal of Principal)

\_\_\_\_\_  
(Principal)

In the Presence of:

\_\_\_\_\_ By: \_\_\_\_\_  
(witness)

\_\_\_\_\_  
(witness)

(Seal of Surety)

\_\_\_\_\_  
(Surety)

\_\_\_\_\_ By: \_\_\_\_\_  
(witness)

\_\_\_\_\_  
(witness)

(Power of Attorney for person signing for Surety Company must be attached to the Bond)

**LABOR AND MATERIAL  
PAYMENT BOND**

Bond Number \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENTS:**

That \_\_\_\_\_, as Principal, hereafter called Principal, and \_\_\_\_\_, as Surety, hereinafter called Surety are held and firmly bound unto the Town of Canton as Obligee, hereinafter called Owner, in the amount of \_\_\_\_\_ and \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, by these presents.

WHEREAS, Principal has by written Agreement dated \_\_\_\_\_ entered into a Contract with the Owner for:

**“Mills Pond Park Splash-Pad Design/Build Project”**

which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

This Bond is issued simultaneously with another Bond in favor of the Town of Canton conditioned for the full and faithful performance of the Contract.

The Surety hereby waives notice of any alterations or extensions of time made by the Owner.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall pay for all labor and materials furnished by himself or his subcontractors for use in the prosecution of the Work, and used therein, then, this obligation to be void; otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Sections 49-41, 49-42, and 49-43 of the Connecticut General Statutes, and the rights and liabilities hereunder shall be determined and limited by said Sections to the same extent as if they were copied at length herein.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Owner named herein or the executors, administrators, or successors of the Owner.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(Seal of Principal)

\_\_\_\_\_  
(Principal)

In the Presence of:

\_\_\_\_\_ By: \_\_\_\_\_  
(witness)

\_\_\_\_\_  
(witness)

(Seal of Surety)  
\_\_\_\_\_  
(Surety)

\_\_\_\_\_ By: \_\_\_\_\_  
(witness)

\_\_\_\_\_  
(witness)

(Power of Attorney for person signing for Surety Company must be attached to the Bond)

**END OF CONTRACT FORMS**



## GENERAL CONDITIONS

### **Article 1: Definitions**

Wherever used in these General Conditions or in the other Contract Documents, the following terms shall have the meanings which shall be applicable to both the singular and plural thereof:

- (a) **Agreement or Contract:** The written agreement between the Owner and the Contractor covering the Work to be performed. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.
- (b) **Bid:** The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
- (c) **Bidder:** Any person, firm or corporation submitting a Bid for the Work.
- (d) **Bonds:** Bid (if required), performance and payment bonds and other instruments of security, furnished by the Contractor and his surety in accordance with the Contract Documents.
- (e) **Change Order:** A written order to the Contractor signed by the Owner authorizing an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time issued after execution of the Agreement.
- (f) **Contract Documents:** The Instructions to Bidders, General Conditions,, the Agreement, Specifications, Drawings (if provided), Addenda (whether issued prior to opening of Bids or execution of the Agreement), Modifications once executed or issued after the execution of the Contract, and such other information as may be included with the Contract Documents.
- (g) **Contract Price:** The total monies payable to the Contractor under the Contract Documents for the Work.
- (h) **Contract Time:** The number of calendar days or the milestone dates set forth in the Contract Documents to complete the Work so that the Work is ready for its intended use as determined by the Owner.
- (i) **Contractor:** The person, firm or corporation with whom the Owner has executed the Agreement.
- (j) **Drawings:** The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams which have been prepared or approved by the Owner.
- (k) **Inspector:** The authorized representative of the Owner who is assigned to the Project or any parts thereof.
- (l) **Modification:** (a) a written amendment of the Contract Document signed by both parties; (b) a Change Order; (c) a written clarification of interpretation issued by the Owner or (d) a written order for a minor change or alteration in the

Work issued by the Owner. A Modification may only be issued after execution of the Agreement and must be in writing.

(m) **Owner:** Town of Canton acting through its First Selectman or the Chief Administrative Officer or their Agent(s).

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

(o) **Shop Drawings:** All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the Contractor, a subcontractor, manufacturer, supplier or distributor and which illustrate the equipment, material or some portion of the Work.

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

(q) **Subcontractor:** An individual, firm or corporation having a direct Contract with the Contractor or with any other Subcontractor for the performance of a part of the Work for the Project.

(r) **Work:** Any and all obligations, duties and responsibilities necessary to the successful completion of the Project assigned to or undertaken by the Contractor under the Contract Documents, including the furnishing of all labor, materials, equipment and other incidentals.

**Article 2: Progress And Submission Schedules;**  
**Preconstruction Conference; Time of Starting The Work**

(a) Within ten days after execution of the Agreement, the Contractor shall submit to the Owner for approval, a critical path method schedule indicating the starting and completion dates of the various portions of the Work. Such schedule shall be updated monthly and is a condition to the Owner's obligation to pay the Contractor. The schedule shall identify and indicate the submission of all required shop drawings and product data required by the Contract Documents and indicate the time allowed by the Contract Documents for approval or disapproval of same by Owner. The Contractor acknowledges that the Owner owns any float indicated in the Contractor's schedule.

(b) Before starting the Work, a conference shall be held to review the above schedules, to establish procedures for handling submissions and for processing Applications for Payment, and to establish a working understanding between the parties as to the Work.

(c) Within ten (10) calendar days after Notice of Award and prior to executing the Agreement the Contractor shall furnish the Owner acceptable Certificates of Insurance, endorsements or insurance policies as required by the Contract Documents.

(d) The Contractor shall start the Work on the date on which the Agreement is executed and delivered, or on such other date, as may be specified in the

Agreement. However, at the time of the execution and delivery of the Agreement the Owner may give the Contractor a written Work Order to proceed, stating a different date on which it is expected that the Contractor shall start the Work.

(e) The Contract Time shall commence to run on the date when the Work is to start as provided in the above paragraph.

### **Article 3: Correlation, Interpretation and Intent of Contract Documents**

(a) It is the intent of the Contract Documents to describe the entire Work to be performed by the Contractor in accordance with the Drawings, Specifications, and other parts of the Contract Documents. The Contract Documents comprise the entire Agreement between the Owner and the Contractor. They may be altered only by a Modification.

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

(c) Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. It shall be the Contractor's responsibility in subcontracting portions of the Work, to arrange or group items of Work under particular trades to conform with then-prevailing customs of the trade, and in accordance with applicable requirements of law. The Owner shall have no liability arising out of jurisdictional issues raised or claims advanced by Subcontractors, trade organizations or other interested parties based on the arrangement or subdivision of Work in the Contract Documents. In the event of any claim arising out of any duplication, conflict, inconsistency or discrepancy within the Contract Documents as to the allocation of the Work among the Subcontractors and Contractor's own forces, the Contractor shall be solely responsible for resolving the claim and shall be responsible for ensuring that all the Work is completed regardless of where it appears in the Contract Documents.

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

(e) The terms "knowledge," "recognize," "discover," and "observe," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor shall be interpreted to mean that which (1) the Contractor knows, recognizes, discovers and observes, and (2) the Contractor should, in exercising the care, skill, and diligence required by the Contract Documents, know, recognize, discover or observe, as the case may be. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a party familiar with the Project and exercising the care, skill, and diligence required by the Contract Documents (including any Work that the party should be able to reasonably anticipate or infer based on Contract Documents then existing).

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

(g) Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents. The Contractor shall promptly report to the Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Owner may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

(h) The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

(i) The Contractor shall conduct its inspection and review of the Contract Documents as provided herein well in advance of the Work or portion thereof as to afford the Owner sufficient time to correct or otherwise supplement the Contract Documents in the event of an error, omission or inconsistency therein. The Contractor shall also allow sufficient time for the Contractor to assess the impact of such error, omission or inconsistency and for the Owner to evaluate same. If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Owner issues in response to the Contractor's notices or requests for information, the Contractor shall make Claims as provided in this Agreement. If the Contractor fails to perform the obligations of paragraphs (g) and (h), the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

(j) After reporting to the Owner any error, inconsistency or omission the Contractor may discover in its review of the Contract Documents, the Contractor shall not proceed with any Work so affected without the Owner's written modification to the Contract Documents unless otherwise directed in writing by the Owner. In the event that the Contractor proceeds with the Work so affected prior to the Owner's written response or written direction from the Owner, then Contractor shall be responsible for the cost of remedial work in the event the

Contractor's actions are inconsistent with the Owner's written modification(s) to the Contract Documents or written direction from the Owner.

(k) In the event of a conflict or discrepancy in the Contract Documents, the greater quantity, higher quality, more expensive item, process, procedure or cost of Work shall control as reasonably determined by the Owner.

#### **Article 4: Copies of Documents and Record Documents**

(a) The Owner shall furnish the Contractor up to five (5) copies of the Specifications and Drawings as are reasonably necessary for the execution of the Work. Additional copies shall be furnished, upon request, at the cost of reproduction.

(b) The Contractor shall keep three (3) record copies of all Specifications, Drawings, Addenda, Modifications and Shop Drawings in good order and annotated to show all changes made during the Work. These shall be available to the Owner during the course of the Work and shall be delivered to him upon Completion of the Work.

#### **Article 5: Separate Contracts**

The Owner may award other contracts in the vicinity of the Work which may proceed simultaneously with the execution of this Contract. The Contractor shall perform his Work so as not to cause interference with other contractors. The Contractor shall cooperate and coordinate its Work with the Owner's separate contractors, if any.

#### **Article 6: Subcontractors**

(a) Prior to the execution and delivery of the Agreement, the successful Bidder shall submit to the Owner for acceptance a list of names of Subcontractors and such other persons and organizations (including those who are to furnish materials or equipment fabricated to a special design) proposed for those portions of the Work. Prior to the execution and delivery of the Agreement, the Owner shall notify the successful Bidder in writing, if the Owner, after due investigation, has reasonable objection to any Subcontractor, person or organization on such list. The Owner shall decide, based on the Owner's objection, if the Agreement shall be executed with the existing list. The Contractor has the option to substitute another Subcontractor, person, or organization to satisfy the Owner's objection without additional compensation. Failure to notify the Contractor prior to the execution and delivery of the Agreement shall constitute an acceptance of such Subcontractor, person or organization. Acceptance of any such Subcontractor, person or organization shall not constitute a waiver of any right of the Owner to reject defective Work, material or equipment not in conformance with the requirements of the Contract Documents.

(b) The Contractor shall be fully responsible for all acts and omissions of his Subcontractors and of persons directly or indirectly employed by them and of persons for whose acts any of them may be liable to the same extent that he is responsible for the acts and omissions of persons directly employed by him. Nothing in the Contract Documents shall create any Contractual relationship between any Subcontractor and the Owner to pay or to see to the payment of

any monies due any Subcontractor, sub-Subcontractor or supplier, except as may otherwise be required by law.

(c) The Contractor agrees to specifically bind every Subcontractor to all of the applicable terms and conditions of the Contract Documents. Every Subcontractor, by undertaking to perform any of the Work, shall there by automatically be deemed to be bound by such terms and conditions.

#### **Article 7: Materials, Equipment and Labor; Or Equal Clause**

(a) The Contractor shall provide and pay for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities and all other facilities, services, and incidentals necessary for the execution and completion of the Work.

(b) All materials and equipment shall be new, except where specifically noted in the Contract Documents or where reuse is allowed and the conditions of reuse. If required by the Contract Documents or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment to be furnished.

(c) Wherever in these Contract Documents a particular brand, make of material, device or equipment is shown or specified, such brand, make of material, device or equipment shall be regarded as a standard of quality, performance and serviceability. Where such items are specified, unless otherwise noted, this shall not be interpreted to preclude the furnishing of items other than those specified where the quality, use and serviceability of the substitute is adjudged by the Owner to be the equal or better than the standard.

(d) All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator or processors, except as otherwise specifically provided in the Contract Documents.

#### **Article 8: Patent Fees and Royalties**

The Contractor shall pay all license fees and royalties and assume all costs incident to the use of any invention, design, process or device which is the subject of a patent rights or copyrights held by others. The Contractor shall indemnify and hold harmless the Owner and the Owner and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses (including attorney's fees) arising out of any infringement of such rights during or after completions of the Work, and shall defend all such claims or allegations, even if meritless, in connections with any infringement of such rights.

#### **Article 9: Permits, Laws and Regulations**

(a) The Contractor shall secure and pay for all applicable permits and licenses in connection with the Work.

(b) The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations applicable to the Work. If the Contractor observes that the

Specifications or Drawings are at variance therewith, he shall give the Owner prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate Modification. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Owner, he shall bear all costs arising therefrom, including but not limited to attorneys' fees and costs.

#### **Article 10: Availability of Lands; Physical and Subsurface Conditions**

The Owner shall provide, as indicated in the Contract Documents and not later than the date when needed by the Contractor, the lands upon which the Work is to be done, rights-of-way for access thereto, and such other lands which are designated for the use of the Contractor. Easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Owner, unless otherwise specified in the Contract Documents. If the Contractor believes that any delay in the Owner's furnishing these lands or providing such easements entitles him to an extension of the Contract Time, he may make a claim therefore as provided hereafter. The Contractor shall provide and pay for all additional land and access thereto that may be required for temporary storage of materials and equipment.

#### **Article 11: Owner's Control**

(a) In the performance of the Work, the Contractor shall abide by all orders, directions and requirements of the Owner and shall perform all Work to the satisfaction of the Owner, consistent with the requirements of the Contract Documents. The Owner shall determine the amount, quality, acceptability and fitness of all parts of the Work, shall interpret the Contract Documents and Change Orders and shall decide all other questions in connection with the Work.

(b) The enumeration herein or elsewhere in the Contract Documents of particular instances in which the opinion, judgment, discretion or determination of the Owner shall control or in which Work shall be performed to his satisfaction or subject to his approval or inspection, shall not imply that only matters similar to those enumerated shall be so governed and performed, but without exception all the Work shall be so governed and so performed.

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

arising solely from those Owner-required means, methods, techniques, sequences or procedures.

(d) If the Contract Documents refer to particular construction means, methods, techniques, sequences or procedures, or indicate or imply that such are to be used in the Work, such mention is intended only to indicate that the operations of the Contractor shall be such as to produce at least the quality of Work implied by the operations described, but that the actual determination of whether or not the described operations may be safely and suitably employed on the Work shall be the responsibility of the Contractor. The Contractor shall notify the Owner for informational purposes only of the actual construction means, methods, techniques, sequences or procedures, which the Contractor intends to employ on the Work, if those differ from those mentioned in the Contract Documents.

### **Article 12: Authority and Duties of Inspectors**

Inspectors employed by the Owner shall be authorized to inspect all Work done and material furnished. Such inspection may extend to all or any part of the Work, and to the preparation or manufacture of the materials to be used. In case of any dispute arising between the Contractor and the Inspector as to materials furnished or the manner of performing the Work, the Inspector shall have authority to reject material or suspend the Work until the question at issue can be referred to and decided by the Owner. The Inspector shall not be authorized to revoke, alter, enlarge, relax or release any requirements of the Contract Documents, nor to approve or to accept any portion of the Work nor issue instructions contrary to the Contract Documents. The Inspector shall in no case act as foreman or perform other duties for the Contractor, or interfere with the management of the Work by the Contractor. Any advice which the Inspector may give the Contractor shall in no circumstance be construed as binding the Owner in any way nor releasing the Contractor from fulfillment of the terms of the Contract.

### **Article 13: Tests and Inspections**

(a) If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to specifically be inspected, tested, or approved by someone other than the Contractor, the Contractor shall give the Owner timely notice of readiness therefore. The Contractor shall furnish the Owner the required certificates of inspection, testing or approval. All such tests shall be in accordance with the methods prescribed by the American Society for Testing and Materials or such other applicable organization as may be required by law or the Contract Documents. The cost of all such inspections, tests and approvals shall be borne by the Contractor unless otherwise provided.

(b) Any Work which fails to meet the requirements of any such test, inspection or approval and any Work which meets the requirements of any such test or approval, but does not meet the requirements of the Contract Documents shall be considered defective. Such defective Work may be rejected, corrected or accepted as may be determined by the Owner.

(c) Neither observations by the Owner or the Inspector nor inspections, tests or approvals by other persons shall relieve the Contractor from his obligation to



perform the Work in accordance with the requirements of the Contract Documents.

**Article 14: Contractor's Supervision and Superintendence**

(a) The Contractor shall supervise and direct the Work efficiently and with his best skill and attention. He shall be solely responsible for the means, methods, techniques, sequences and procedures. In accordance with Article 3, before undertaking the Work he shall carefully study and compare the Contract Documents and check and verify all figures shown thereon. He shall at once report in writing to the Owner any conflict, error or discrepancy which he may discover, the Contractor shall be responsible to see that the Work complies with the Contract Documents.

(b) The Contractor shall keep on the Work Site, at all times during its progress, a superintendent/foreperson satisfactory to the Owner. The superintendent/foreperson shall not be replaced without the consent of the Owner except under extraordinary circumstances. The Superintendent/foreperson shall be the Contractor's representative at the Site and shall have authority to act on behalf of the Contractor. All Communications given to the superintendent/foreperson shall be as binding as if given to the Contractor.

(c) The Owner shall not be responsible for the acts or omissions of the Contractor, or any Subcontractors, or any of his or their agents or employees, or any other persons performing any of the Work.

**Article 15: Safety and Protection; Emergencies**

(a) The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work as may be required by applicable law, industry standard, or local practice. The 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 employees on the Work site and other persons who may be affected thereby.

2. All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site.

3. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities.

(b) No materials or other obstruction shall be placed within fifteen (15) feet of any fire hydrant, which at all times must be readily accessible to the fire department.

(c) The Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. All damage, injury or loss to any property referred to in the above paragraphs caused, directly or indirectly, in whole or in part by the Contractor, any Subcontractor or anyone

directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by the Contractor.

(d) In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, the Contractor, without special instruction or authorization from the Owner or Owner, is obligated to act, at his discretion, to prevent threatened damage, any significant changes in the Work or deviations from the Contract Documents caused thereby, and a Change Order shall thereupon be issued covering the changes involved, provided such action is not the result of the fault or negligence, in whole or in part, of the Contractor, a Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

#### **Article 16: Access to the Work; Uncovering Finished Work**

(a) The Owner and his representatives shall, at all times, have access to the Work. The Contractor shall provide proper facilities for such access and observation of the Work and also for any inspection, or testing thereof by others.

(b) If any Work is covered contrary to the instruction of the Owner, it must, if requested by the Owner, be uncovered for his observation and replaced at the Contractor's expense.

(c) If any Work has been covered which the Owner has not specifically requested to observe prior to its being covered, or if the Owner considers it necessary or advisable that covered Work be inspected or tested by others, the Contractor, at the Owner's request, will uncover, expose or otherwise make available for observation, inspection or testing as the Owner may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective or does not meet the requirements of the Contract Documents, the Contractor shall bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, including compensation for additional professional services, and an appropriate Change Order shall be issued deducting all such costs from the Contract Price. If, however, such Work is found to be non-defective and meets the requirements of the Contract Documents, the Contractor shall be allowed an increase in the Contract Price or extension of the Contract Time directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction if he makes a claim therefore as provided hereafter.

#### **Article 17: Change in the Work**

(a) Without invalidating the Agreement, the Owner may, at any time or from time to time, order additions, deletions or revisions in the Work; these shall be authorized by Change Orders. Upon receipt of a Change Order, the Contractor shall proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, an equitable adjustment may be made as provided hereafter.

(b) The Owner may authorize minor changes or alterations in the Work not involving extra cost and not inconsistent with the overall intent of the Contract Documents. These may be accomplished by a field order ("Field Order"). If the Contractor believes that any minor change or alteration authorized by the Owner

entitles him to an increase in the Contract Price, he may make a claim therefore as provided hereafter.

(c) Additional Work performed by the Contractor without authorization of a Change Order shall not entitle him to an increase in the Contract Price or an extension of the Contract Time, except in the case of an emergency as provided in herein.

(d) It is the Contractor's responsibility to notify his Surety of any changes affecting the general scope of the Work or change in the Contract Price and the amount of the applicable Bonds shall be adjusted accordingly. The Contractor will furnish proof of such adjustment to the Owner.

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

(f) A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order or as a directive to the Contractor to proceed with work deemed by the Owner to be within the scope of the Contractor's Work, which the Contractor disputes

#### **Article 18: Change Orders**

(a) The value of any Work covered by a Change Order shall be determined in one of the following ways:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved.

2. By mutual acceptance of a lump sum.

3. By cost and mutually acceptable fixed amount for overhead and profit.

4. If none of the above methods is agreed upon, the value shall be determined by the Owner on the basis of costs and a percentage for overhead and profit. Costs shall only include labor (payroll, payroll taxes, fringe benefits, workmen's compensation, etc.), materials, equipment, and other incidentals directly related to the Work involved. The maximum percentage which shall be allowed for the Contractor's combined overhead and profit shall be as follows:

a. For all such Work done by his own organization, the Contractor may add up to ten percent (10%) of his actual net increase in costs, and

b. For all such Work done by Subcontractors, each Subcontractor may add up to ten percent (10%) of his actual net increase in costs form combined overhead and profit and the Contractor may add up to five percent (5%) of the Subcontractor's total for his combined overhead and profit; provided

that no overhead or profit shall be allowed on costs incurred in connection with premiums for public liability insurance or otherwise special insurance directly related to such Work.

In each case, the Contractor will submit in form prescribed by the Owner an itemized cost breakdown together with supporting data.

5. The amount of credit to be allowed by the Contractor to the Owner for any such change which results in a net decrease in cost will be the amount of the actual net decrease as determined by the Owner. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase, if any.

#### **Article 19: Change of the Contract Time**

(a) The Contract Time may only be changed by a Change Order. If the Contractor is entitled by the Contract Documents to make a claim for an extension in the Contract Time, his claim shall be in writing delivered to the Owner within ten (10) days of the occurrence of the event giving rise to the claim. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.

(b) The Contract Time may be extended in an amount equal to time lost due to delays beyond the control of the Contractor if he makes a claim therefore as provided in paragraph above. Such delays shall include, but not be restricted to, acts or neglect by any other Contractor employed by the Owner, fires, floods, labor disputes, epidemics, abnormal weather conditions, or acts of God or the public enemy.

(c) All time limits stated in the Contract Documents are of the essence of the Agreement. The provisions of this article shall not exclude recovery for damages (including compensation for additional professional services) for delay by either party.

(d) No Damage for Delay. In all events, the Contractor shall have no separate claim for damages or costs of any kind resulting from a delay in the Work as demonstrated by the Contractor's construction schedule, regardless of whether all or part of such delay may be in any way attributable to the acts, the failure to act, or the omissions of the Owner, the Owner's agents or representatives or independent contractors, the Owner's consultants, if any, the Owner or the Owner's consultants. The Contractor agrees that its sole remedy for such delay shall be an extension of time, which may be granted or denied in accordance with the terms of this Agreement.

(e) Waiver of Impact Claims. In all events, the Contractor waives all forms of impact claims including but not limited to efficiency, loss of productivity, trade stacking, disruption, re-sequencing, and the like regardless of whether all or part of such impact may be in any way attributable to the acts, the failure to act, or the omissions of the Owner, the Owner's agents or representatives or independent contractors, the Owner's consultants, if any, the Owner or the Owner's consultants.

(f) The Contractor shall include similar No Damage for Delay and No Impact Claim provisions in the agreements the Contractor executes with its

Subcontractors, suppliers and other persons or entities that the Contractor employs to perform the Work.

(g) The Contractor waives Claims against the Owner for consequential damages arising out of or relating to this Contract. This waiver includes damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit. This waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with the Contract Documents.

**Article 20: Warranty and Guarantee; Correction, Removal or Acceptance of Defective Work**

(a) The Contractor warrants and guarantees to the Owner and the Owner that all materials and equipment shall be new unless otherwise specified and that all Work will be of good quality and free from faults or defects and in accordance with the requirements of the Contract Documents and of the inspections, tests or approvals referred to in Article 13: Tests and Inspections. All unsatisfactory Work, all faulty or defective Work and all Work not conforming to the requirements of the Contract Documents or of such inspections, tests or approvals shall be considered defective. Prompt notice of all defects shall be given to the Contractor. All defective Work, whether or not in place, may be rejected.

(b) If required by the Owner prior to the issuance of the certificate of completion, the Contractor shall promptly, without cost to the Owner and as required by the Owner, either correct any defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by the Owner, remove it from the site and replace it with non-defective Work or remove and replace such rejected Work within a reasonable time, all as required by written notice from the Owner, the Owner may have deficiency corrected or the rejected Work removed and replaced. All direct or indirect costs of such correction or removal and , including compensation for additional professional services shall be paid by the Contractor, and an appropriate Change Order shall be issued deducting all such costs from the Contract Price. The Contractor shall also bear the expenses of making good all work of others destroyed or damaged by his correction, removal or of his defective Work.

(c) If, after the approval of final payment and prior to the expiration of one (1) year after the date of completion, any Work is found to be defective the Contractor shall, promptly without cost to the Owner and in accordance with the Owner's written instructions, either correct such defective Work, or, if it has been rejected by the Owner, remove it from the site and replace it with non-defective Work. If the Contractor does not promptly comply with the terms of such instructions, the Owner may have the defective Work corrected or the rejected Work removed and replaced, and all direct and indirect costs of such removal and , including Compensation for additional professional services, will be paid by the Contractor and/or deducted from monies owed the Contractor.

**Article 21: Applications for Progress Payments**

(a) At least ten (10) days before each progress payment falls due (but not more often than once a month), the Contractor shall submit to the Owner for review the Application for Payment filled out and signed by the Contractor covering the Work completed as of the date of the Application and supported by such data as the Owner may reasonably require. There shall be no payment for materials stored on or off the site. The progress payment request shall be subject to a five percent (5%) retainage which shall be held by the Owner until all defective work and all punch list items have been addressed to the full satisfaction of the Owner and the Town. The retainage may be held beyond the application for Final Payment if there is any outstanding defective work that needs to be corrected and/or punch list items that need to be addressed; after which time all outstanding defective work has been corrected and all punch list items have been addressed to the full satisfaction of the Owner and the Town; the retainage can be released. Retainage can be reduced, after the application for Final Payment has been made, to the value of the outstanding defective work that needs to be corrected plus the value of punch list items that need to be addressed.

(b) The Contractor warrants and guarantees that title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, shall have passed to the Owner prior to the making of the Application for Payment, free and clear of all liens, claims, security interests and encumbrances; and that no Work, materials or equipment covered by an Applications for Payment shall have been acquired by the Contractor or by any other person performing the Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person. Each progress payment request shall be accompanied by Lien Waivers in a form satisfactory to the Owner's legal counsel. No progress payment shall be processed by the Owner for payment without fully executed lien and claim waivers from the Contractor, material suppliers and Subcontractors.

(c) The Owner shall, within thirty (30) days after receipt of each Application for Payment, either indicate in writing his approval of payment and present the Application to the Owner, or return the Application to the Contractor indicating in writing his reasons for refusing to approve payment. In the latter case, the Contractor may make the necessary corrections and resubmit the Application.

(d) The Owner shall, within thirty (30) days of presentation of an approved Application for Payment by the Owner, pay the Contractor the amount approved by the Owner.

(e) The Contractor shall pay its Subcontractor(s) and suppliers in accordance with applicable Connecticut law and shall cause its Subcontractor(s) to pay their Subcontractor(s) in accordance with applicable Connecticut law.

## **Article 22: Certificates of Completion and Final Payment**

(a) Upon written notice from the Contractor that the Project is complete, the Owner shall make a final inspection with the Owner and the Contractor and shall notify the Contractor in writing of any particulars in which this inspection reveals that the Work is defective and/or not completed. The Contractor shall

immediately make such corrections and perform such work as are necessary to remedy such defects and/or complete the project.

(b) After the Contractor has completed any such corrections and finished the contract work to the full satisfaction of the Owner and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificated of inspection, lien and claim waivers from itself, Subcontractor(s) and material suppliers, and other documents, all as required by the Contract Documents; the Owner shall issue a certificate of completion and the Contractor may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by such supporting data as the Owner may require, together with complete and legally effective releases or waivers (satisfactory to the Owner) of all liens and claims arising out of the Work, including but not limited to all labor and services performed and the material and equipment furnished thereunder. In lieu thereof and as approved by the Owner, the Contractor may furnish receipts of releases in full; an affidavit of the Contractor that the releases which a lien or claim could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which the Owner or his property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any Subcontractor or supplier fails to furnish a release or receipt in full, the Contractor may furnish a bond satisfactory to the Owner to indemnify and defend it against any lien or claim.

(c) If, on the basis of his observation and review of the Work during construction, his final inspection and his review of the final Application for Payment, all as required by the Contract Documents, the Owner is satisfied that the Work has been completed and the Contractor has fulfilled all of his obligations under the Contract Documents, he will, within thirty (30) days after receipt of the final Application for Payment, indicate in writing his approval of payment and present the Application to the Owner for payment. Otherwise, he will return the Application to the Contractor, indicating in writing his reasons for refusing to approval final payment, in which case the Contractor will make the necessary corrections and resubmit the Application for Payment.

(d) Final payment shall constitute one hundred percent (100%) of the final Contract amount. A Maintenance Bond in the amount of one hundred percent (100%) of the Contract Cost shall be provided prior to final payment. The Owner shall, within thirty (30) days of presentation to him of an approved final Application for Payment, pay the Contractor the amount approved by the Owner.

### **Article 23: Waivers of Claims and Continuing Obligations**

(a) The Contractor's obligation to perform the Work and complete the Project in accordance with the Contract Documents shall be absolute. Neither approval of any progress or final payment by the Owner, nor any payment by the Owner to the Contractor under the Contract Documents, nor any use or occupancy of the Project or any part thereof by the Owner, nor any act of acceptance by the Owner nor any failure to do so, nor any correction of faulty or defective Work by the Owner shall constitute an acceptance of Work not in accordance with the Contract Documents.

(b) Pending final resolution of a claim, except as otherwise mutually agreed in writing, the Contractor shall proceed diligently with performance of the

Contract and the Owner shall continue to make payments, which are not the subject of a good faith dispute, in accordance with the Contract Documents.

(c) The making and acceptance of final payment shall constitute a waiver of all claims by the Contractor against the Owner other than those previously made in writing and still unsettled.

#### **Article 24: Indemnification**

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

(b) Further, to the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, the Owner and the Owner's consultant(s) and their respective officers, directors, owners, agents, members, employees and independent contractors, from and against all allegations, even if meritless, claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from any breach or failure of the Contractor to comply with the terms and conditions of the Contract Documents but only to the extent caused by the acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Article.

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

(d) All defense, indemnity and hold harmless provisions set forth in this Contract shall survive termination and/or cancellation and/or full performance of the Contract.

#### **Article 25: Cleaning Up**



The Contractor shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work, and at the completion of each day of the Work shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, construction equipment and machinery, and surplus materials, and shall leave the site clean and passable. The Contractor's failure to keep the site free from waste, rubbish and debris on a daily basis shall entitle the Owner to clean up said waste, rubbish and debris and charge the costs of the same to the Contractor without notice and/or deduct said costs from monies owed to the Contractor.

#### **Article 26: Owner's Right to Stop or Suspend Work**

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

(b) The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension or interruption. No adjustment shall be made to the extent

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

2. That an equitable adjustment is made or denied under another provision of the Contract.

(c) The Contractor shall resume the Work on the date so fixed by the Owner.

#### **Article 27: Owner's Right to Terminate**

The Owner may terminate or abandon the Project for any one or more of the following reasons:

(a) If the Contractor is adjudged as a bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for the Contractor or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws, or if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to his Subcontractor(s) or for labor, materials or equipment or if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction, or if he disregards the authority of the Owner or Owner, or if he otherwise violates any provision of the Contract Documents, then the Owner may, without prejudice to any other right or remedy and after giving the Contractor and his surety seven (7) days written notice, terminate the services of the Contractor and take possession of the Work and of all machinery thereon owned by the Contractor, and finish the Work by whatever method the Owner may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the Work, including compensation for additional professional services, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor shall pay the difference to the Owner on demand including but not limited to

attorneys' fees and any other associated costs. Such other associated costs will be determined by the Owner.

(a) Where the Contractor's services have been so terminated by the Owner, said termination shall not affect any rights of the Owner against the Contractor then existing or which may thereafter accrue.

(b) Upon seven (7) days written notice to the Contractor and the Owner, the Owner may, without cause and without prejudice to any other right or remedy, elect to abandon the project and terminate the Agreement for the Owner's convenience. In such case, the Contractor shall be paid for all Work actually executed and reasonable expenses sustained by reason of such termination. The Owner shall reasonably determine the amount of monies due the Contractor. Such payment shall not include any overhead or profit on Work not executed. In all events, the Contractor waives any and all claims for damages of any kind or nature including but not limited to claims for overhead and profit on Work not executed.

(c) In the event the Owner is adjudged to have wrongfully terminated the Agreement, then such termination shall be converted into a termination for convenience and the Contractor shall be compensated as provided in Paragraph (c) above.

#### **Article 28: Contractor's Right to Stop Work or Terminate**

If, through no act or fault, in whole or in part, of the Contractor or anyone for whom it is directly or indirectly liable, the Work is suspended for a period of more than ninety (90) days by the Owner or under an order of court or other public authority, or the Owner fails to act on any Application for Payment within sixty (60) days after it is submitted, or the Owner fails to pay the Contractor any sum approved by the Owner within sixty (60) days of its approval and presentation, then the Contractor may, upon seven (7) days written notice to the Owner and the Owner, terminate the Agreement and recover from the Owner payment for all Work executed. The Owner shall reasonably determine the amount of monies due the Contractor. Such payment shall not include any overhead or profit on Work not executed. In all events, the Contractor waives any and all claims for damages of any kind or nature including but not limited to claims for overhead and profit on Work not executed.

Instead of terminating the Agreement, if the Owner has failed to act on an approved [by the Owner] Application for Payment or the Owner has failed to make any approved payment [by the Owner] as aforesaid, the Contractor may upon seven (7) days' notice to the Owner stop the Work until he has been paid all approved amounts then due. Contractor cannot stop work for lack of payment if said payment was not made for reason.

#### **Article 29: Provisions Required by Law Deemed Inserted**

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or is not correctly inserted, then upon the application of either the Owner or the Contractor, the Contract shall forthwith be physically amended to make such insertion.

### **Article 30: Contract Security**

The Contractor shall furnish surety bonds acceptable to the Owner in an amount at least equal to one hundred percent (100%) of the Contract Price as security for the faithful performance of this Contract and for payment of all persons performing labor under this Contract and furnishing materials in connection with this Contract. The surety on such bond shall be a duly authorized surety company, satisfactory to the Owner and authorized to do business in the State of Connecticut. Not applicable.

### **Article 31: Time for Completion and Liquidated Damages**

It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the Contract Documents (as outlined in the Instruction to Bidders section of this Contract) for the Work to be done hereunder are ESSENTIAL CONDITIONS of this Contract; and it further mutually understood and agreed that the Work embraced in this Contract shall be commenced not more than ten (10) calendar days from the date of written Notice To Begin Work or Notice to Proceed or issuance of a Work Order.

The Contractor agrees that said Work shall be pursued regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for the completion of the Work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

If the said Contractor shall neglect, fail or refuse to complete the Work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as part consideration for the awarding of this Contract, to pay the Owner the amount specified in the Contract, not as a penalty but as liquidated damages for such breach of Contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the Work.

The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, the said amount is agreed to be the amount of damages which the Owner would sustain and said amount shall be retained from time to time by the Owner from current periodical estimates. It is further agreed that time is of the essence of each and every portion of this Contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract an additional time is allowed for the completion of any Work, the new time limit fixed by such extension shall be of the essence of this Contract. Provided, that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the Work is due:

(a) To any preference, priority or allocation order duly issued by the State or Federal Government;

(b) To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, act of God, or the public enemy,, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes; and

(c) To any delays of Subcontractor(s) or supplies occasioned by any of the causes specified in subsections (a) and (b) of this article.

### **Article 32: Sanitary Facilities**

Contractor shall provide and maintain such sanitary accommodations for use of his employees and those of his Subcontractors as may be necessary to comply with requirements and regulations of local and state departments of health and as directed by Owner.

### **Article 33: Nondiscrimination Clause**

Contractor agrees to comply with all provisions of the Civil Rights Act of 1964, the Equal Opportunity Act of 1972, Executive Orders 11246, 11375, 11478, and if applicable the Connecticut Fair Employment Practice Law and any and all similar state or federal legislation, and any amendments thereof.

### **Article 34: Wage Scale Provisions**

Contractor agrees to comply with all State/Federal Wage Scale Provisions and the Wage and Payroll Section of this Contract in accordance with Conn. Gen. Stat. Section 31-53(g) if applicable based on the Contractor's submitted total bid price for the project work included under this Contract.

### **Article 35: Work by Others**

The Contractor agrees that the Owner may permit other persons, firms, corporations or entities to utilize publicly owned property at the site of the Work and that such permission(s) shall not affect this Agreement.

### **Article 36: Mediation of Disagreements**

In case of any dispute between the Owner and the Contractor or other party making claims in relation to this Contract concerning the respective rights and liabilities of the parties thereunder, which cannot be resolved within thirty (30) days by mutual agreement of the parties may be referred to the American Arbitration Association for Non-Binding Mediation by either party. The costs of such Mediation shall be borne equally by each party involved in the Mediation. Only in the event of failure to resolve the dispute by Mediation shall suit be instituted under this Contract; provided however, that any party may institute suit to preserve any claims as may be required by law.

### **Article 37: Applicable Law**

This Contract is to be governed by and construed in accordance with the laws of the State of Connecticut. Any suit brought against a party to this Contract shall be brought exclusively in the Connecticut Superior Court of the Hartford Judicial District.

### **Article 38: Alteration and Amendments**

This Contract may be altered, amended or modified only in writing by the Owner and the Contractor.

### **Article 39: Notice**

Any notice under this Contract shall be in writing and shall be sent by Registered or Certified Mail, with Return Receipt, to the Owner c/o its Chief Administrative Officer or the Contractor, each at the last address as designated by each party in writing.

### **Article 40: Shop Drawings and Samples**

(a) If required by the Owner and/or the contract documents contained herein, after checking and verifying all field measurements, the Contractor shall submit to the Owner for approval, in accordance with the accepted schedule of Shop Drawing submissions, five (5) copies (or at the Owner's option, one reproducible copy) of all Shop Drawings and other submittals as may be required by the Contract Documents and/or as ordered by the Owner, which shall have been checked by and stamped with the approval of the Contractor and identified as the Owner may require. The data on Shop Drawings and other submittals shall be complete with respect to dimensions, design criteria, materials of construction and the like to enable the Owner to review the information as required.

(b) The Contractor shall also submit to the Owner for approval, with such promptness as to cause no delay in the Work, all samples shall have been checked by and stamped with the approval of the Contractor, identified clearly as to material, manufacturer, any pertinent catalog numbers, and the use for which intended.

(c) At the time of each submission, the Contractor shall, in writing, call the Owner's attention to any deviations that the Shop Drawing(s) or sample may have from the requirements of the Contract Documents.

(d) The Owner shall review, with reasonable promptness, Shop Drawing(s) and samples, but his review shall be only for conformance with design concept of the Project and for compliance with the information given in the Contract Documents. The review of separate items as such shall not indicate review of the assembly in which the item functions. The Contractor shall make any corrections required by the Owner and shall return the required number of corrected copies of the Shop Drawings and resubmit new samples until reviewed and accepted. The Contractor shall direct specific attention in writing or on resubmitted Shop Drawings to revisions other than the corrections called for by the Owner on previous submissions.

(e) No Work requiring a Shop Drawing or sample submission shall commence until the submission has been reviewed by the Owner.

(f) The Owner's review of the Shop Drawings or samples shall not relieve the Contractor from his responsibility for any deviations from the requirements of the Contract Documents, unless the Contractor has in writing called the Owner's attention to such deviations at the time of submission and the Owner has given written approval to the specific deviation, nor shall any approval by the Owner

relieve the Contractor from the responsibility for errors or omissions in the Shop Drawings.

**Article 41: Maintenance Bond**

The Contractor shall be required to furnish the Owner a Maintenance Bond in the amount of one hundred (100%) percent of the final cost of the work prior to Final Payment. This Maintenance Bond shall assure the satisfactory condition of the required Work under the Contract for a period of not less than one (1) year after the acceptance of the Work by the Owner. The Surety for the Bond shall meet the same criteria as for the Performance Bond and the Labor and Materials Payment Bond. Not applicable.

**Article 42: Progress Prints and As Built Drawings**

At the completion of the Work and if required by the Contract Documents and/or by the Owner, and as an express condition precedent to final payment, the Contractor shall submit to the Owner an as-built of the Work completed under the this Contract.

**Article 43: Electrical Energy**

The Contractor shall make all necessary applications and arrangements and pay all fees and charges for electrical energy for power and light required for the proper completion of this Contract during its entire progress. The Contractor shall provide, obtain permits for, and pay for all temporary wiring, switches, connections, and meters. There shall be sufficient artificial light, by means of electricity, so that all Work may be done in a workmanlike manner, when there is not sufficient daylight. Sufficient temporary power outlets shall be furnished to enable the various trades to use normal electric power tools.

**Article 44: Standard Specifications**

All Contract Specifications, Special Provisions, and any specification documents [e.g. State of Connecticut Department of Transportation FORM 816] referenced in these contract documents shall be considered part of this Contract. The specifications for any materials referred to in this contract shall comply with all the pertinent material specifications of the State of Connecticut Department of Transportation FORM 816 for said material [or similar material in Form 816]. All construction procedures for any work referred to in this contract shall comply with all the pertinent construction methods of the State of Connecticut Department of Transportation FORM 816 for said work [or similar work in Form 816]. Note, payment for any materials and work shall be at the respective various unit prices or lump sum prices listed in the Contract Proposal and shall be inclusive of all work and materials related thereto.

**Article 45: CALL BEFORE YOU DIG REQUIREMENTS**

Prior to opening an excavation, effort shall be made to determine whether underground installations, i.e., sewer, water, fuel, electric lines, etc. will be

encountered and, if so, where such underground installations are located. When the excavation approaches the estimated location of such an installation, the exact location shall be determined by careful probing or hand digging, and when it is uncovered, proper support shall be provided for the existing installation. Utility companies shall be contacted and advised of proposed work prior to the start of actual excavation.

"CALL BEFORE YOU DIG," toll free, statewide, 1-800-922-4455 at least 24 hours in advance of performing any excavation and/or as may be required.

#### **Article 46: Protection Of The Work**

The Contractor shall protect all work done under this contract, and all work done by the Owner's separate contractors within the limits of this Contract during the progress of the Work and until completion, from injury by reason of any work under this Contract, or by reason of any negligence on its part, or by reason of weather conditions. The method to be employed for protection shall be at the Contractor's discretion, but shall be subject to the approval of the Owner, who may order the work or any portion of it suspended when he considers conditions to be not favorable for first-class work.

The Contractor shall protect all Work; bituminous pavement, concrete walk, grass areas, etc., from all traffic and use until it is suitable for use or until completion of the Contract.

#### **Article 47: Dust Control and Cleanup**

Upon suspension or completion of the Work or of any portion thereof, the Contractor shall remove all materials, equipment and rubbish, and shall leave the premises in a neat and orderly condition. The premises shall, during the progress of the work, be kept clean, presentable and satisfactory to the Owner, and shall be so left at the completion of the Contract. As the work progresses, all areas shall be thoroughly cleaned of all rubbish, excess earth, rock, and other debris. The Contractor shall take necessary precautions to prevent and avoid dust and to keep the area clean each day, whether a normal work day or not. All cleanup operations shall be accomplished to the satisfaction of the Owner. The cost of any work associated with any required dust control and/or cleanup for the work under this project will be considered included in the base unit prices and/or lump sum prices for each item in the bid proposal and there will be no separate payment for such work performed to complete this project.

#### **Article 48: Construction Materials**

Construction materials on the site shall be limited in quantity and place occupying area so as to not hinder and block the use of the park nor any facilities.

No advance payment will be made to the Contractor for construction materials purchased in advance and stored by the Contractor. All materials will be paid for each item complete and accepted in place according to the Contract Price or applicable unit prices.

#### **Article 49: Construction Staking, Line, and Grade**

Any survey work required for the proper construction of the various components, appurtenances, etc. associated with the project and work included in this Contract; shall be the Contractor's responsibility to coordinate and have performed. The Contractor shall complete all work to within 1/4 inch of line and grade as indicated on the Contract Plans and/or as established by the Owner, except where otherwise specified. The Contractor's surveyor shall be responsible for supplying line and grade at least 48 hours prior to beginning any work that may require line and grade.

Unless the Bid documents include an item for construction surveying and staking; the cost of any work associated with any required construction surveying and staking for the work under this project will be considered included in the base unit prices and/or lump sum prices for each item in the bid proposal and there will be no separate payment for such work performed to complete this project.

#### **Article 50: Work Procedure**

When removing/installing materials, etc. is part of this Contract, the Contractor shall start and complete all said work on one section at a time prior to proceeding with other sections unless otherwise authorized by the Town. The Contractor shall schedule its operations so that park users will not be unduly hindered.

The Contractor shall not perform work on more than two (2) sections of the project at a time, unless approved by the Owner in writing. The Contractor shall notify property owners, occupants, tenants, etc.; 48 hours in advance when access to property (e.g. driveways, sidewalks, etc.) is to be hindered or denied.

Access to local properties and businesses shall be maintained at all times except when actual Work is being done in front of a driveway or sidewalk to a property.

#### **Article 51: Prompt Completion of Work**

After and removal/installing or other work is commenced, the Contractor shall prosecute the Work with diligence and on a continuous uninterrupted basis and shall promptly complete such Work and restore the area to its original condition or as near as may be, so as not to obstruct the access thereon more than is reasonably necessary.

#### **Article 52: Work Interruptions**

There may be some occasions where utility companies will be involved in the relocation or adjustment of their existing facilities. In such event, the Contractor shall work in another location until the utility completes its work. No additional compensation will be made for delays or inconvenience sustained by the Contractor due to interference by the utility companies.



### **Article 53: Temporary Suspension of Work**

The Owner shall have the authority to suspend the work wholly or in part, for such period or periods as he considers necessary in the best interest of the Town, or in the interest of public necessity, convenience or safety as provided in this Agreement.

If it should become necessary to stop work for an identified period, the Contractor shall store all materials and equipment in such manner that they will not obstruct or impede the public unnecessarily nor allow the material to become damaged in anyway; and he shall take every precaution to prevent damage to the work already completed, and to erect temporary structures where necessary.

The Contractor shall maintain the project areas in safe condition for use and shall maintain all barricades, signs and lights during the period of project suspension, construction and/or disturbance.

Unless the Bid documents include an item(s) for maintenance and protection of park users; the cost of any work associated with any required maintenance and protection of the park including but not limited to barricades, signs, lights, signals, etc. as required and/or as ordered by the Owner for the same execution of the work under this project will be considered included in the base unit prices and/or lump sum prices for each item in the bid proposal and there will be no separate payment for such work performed to complete this project.

### **Article 54: Noise**

The Contractor shall conduct and carry out construction work in such a manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. During the hours of 6:00 p.m. and 7:00 a.m. he shall not use, except with the express written permission of the Owner or in case of an emergency as herein otherwise provided, any tool, appliance or equipment producing noise of sufficient volume and or beyond limits established by local codes and ordinances so as to disturb the sleep or repose of occupants of the neighboring property.

### **Article 55: Protection of Adjoining Property**

The Contractor shall at all times and at its own expense preserve and protect from injury any adjoining property by providing proper safeguards and taking other measures suitable for that purpose. The Contractor shall, at his own expense, shore up and protect all walls, fences or other property likely to be damaged during the progress of the construction work and shall be responsible for all damage to public or private property or park resulting from its failure to properly protect and carry out said Work. The Contractor shall not disturb, cut or remove (even temporarily) any trees, bushes, shrubs or flowers on municipal or private property. Any of these items which have been disturbed, removed or cut

by the Contractor shall be the sole responsibility of the Contractor; including should any of the trees, bushes, shrubs or flowers die as a result of the Contractor's Work or operations.

**Article 56: Insurance**

The Contractor shall carry and keep in force during the term of this Agreement completed operations period insurance as more specifically described in the Contract Documents by a company or companies authorized to do business in Connecticut. The Company shall provide certificates of insurance and endorsements or insurance policies specifying such coverage and naming the Town and its officers, agents, employees and volunteers as additional insured prior to the start of the Work and on an annual basis. In the event of any conflict between the insurance requirements set forth below and insurance requirements set forth in other Contract Documents, the requirements in this Agreement shall control.

The Contractor shall provide the following coverages and minimum limits of insurance:

- 1) Worker's Compensation Insurance:  
Statutory Coverage

Employer's Liability

\$1,000,000 each accident/\$1,000,000 disease-policy limit/\$1,000,000 disease each employee

- 2) Commercial General Liability:

Including Premises & Operations, Products and Completed Operations, Personal and Advertising Injury, Contractual Liability and Independent Contractors.

Limits of Liability for Bodily Injury and Property Damage

Each Occurrence \$1,000,000

Aggregate \$2,000,000

- 3) Automobile Insurance:  
Including all owned, hired, borrowed and non-owned vehicles and pollution

Limit of Liability for Bodily Injury and Property Damage:

Per Accident \$1,000,000

- 4) Umbrella

Each Occurrence \$5,000,000

Aggregate Limit \$5,000,000

The Contractor and the Contractor's subcontractors, if any, shall cause the commercial liability coverage required by the Contract Documents to include (1) the Town and its officers, agents, volunteers and employees, as additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Town and its officers, agents, volunteers and employees as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations. The Contractor shall, before commencement of its Work, submit to the Town evidence of the aforementioned requirements from itself and its subcontractors, if any, in the form of an additional insured endorsement or insurance policy acceptable to the Town. Failure by the Contractor to provide the endorsements required in this section shall entitle the Town to withhold payment from the Contractor then due or to become due until such time as the endorsements or policies are provided. The insurance (both primary and umbrella coverages) of the Contractor and the Contractor's subcontractor's, if any, shall be primary to any insurance that may be available to the Town and its officers, agents, employees and volunteers and any insurance available to the Town and its officers, agents, employees and volunteers is secondary and non-contributory. The policies of insurance or endorsements as provided herein shall state that the insurance of the Contractor and the Contractor's subcontractor's, if any, (both primary and umbrella coverages) shall be primary to any insurance that may be available to the Town and its officers, agents, employees and volunteers and any insurance available to the Town and its officers, agents, employees and volunteers is secondary and non-contributory. The Contractor and the Contractor's subcontractor's, if any, shall cause their insurers to directly provide the Town with thirty (30) days advance notice of cancellation. The Contractor and the Contractor's subcontractor's, if any, shall cause their insurers to directly provide the Town with ten (10) days advance notice of cancellation for non-payment. The insurance obligations provided herein shall survive the termination and/or cancellation and/or full performance of this Agreement

(a) The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
2. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
4. Claims for damages insured by usual personal injury liability coverage;

5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
6. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
7. Claims for bodily injury or property damage arising out of completed operations; and
8. Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18 and elsewhere in the Contract Documents.
9. Products Liability and Completed Operations, Premises, Personal and Advertising Injury, and Independent Contractor.
10. Professional Liability to the extent the Contractor provides any professional services as may be required by the Contract Documents or required for the Contractor's means, methods and procedures.

(b) The insurance required by this Article shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverage's, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

(c) Certificates of insurance, policy endorsements and insurance policies acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or of each required policy of insurance. These certificates and the insurance policies and endorsements required by this Article shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or of such coverage until the expiration of the time required by this Agreement.

(d) The Contractor and the Contractor's Subcontractors shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Owner and the Owner's consultants and the agents and employees of any of them as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner, the Owner and the Owner's consultants and the agents and employees of any of them as additional insureds for claims caused in

whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations. The Contractor shall, before commencement of its Work, submit to the Owner evidence of the aforementioned requirements from itself and its Subcontractors in the form of an ISO 20 10 11 85 additional insured endorsement or equivalent as determined by the Owner. Failure by the Contractor to provide the Application for Payment then due or to become due until such time as the endorsements are provided. The insurance of the Contractor and the Contractor's Subcontractor's (both primary and umbrella coverages) shall be primary to any insurance that may be available to the Owner, the Owner and the Owner's consultants and the agents and employees of any of them and any insurance available to the Owner, the Owner and the Owner's consultants and the agents and employees of any of them is secondary and non-contributory. The policies of insurance or endorsements as provided herein shall state that the insurance of the Contractor and the Contractor's Subcontractor(s) (both primary and umbrella coverages) shall be primary to any insurance that may be available to the Owner and any insurance available to the Owner is secondary and non-contributory. The Contractor and the Contractor's Subcontractor's shall cause their insurers to directly provide the Owner with thirty (30) days advance notice of cancellation. The insurance obligations provided herein shall survive the termination and/or cancellation and/or full performance of this Agreement.

## **END OF GENERAL CONDITIONS**

**BID PROPOSAL**

**MILLS POND PARK SPLASH-PAD DESIGN/BUILD PROJECT**

To: Robert Skinner  
Chief Administrative Officer  
Town of Canton  
4 Market Street, P.O. Box 168  
Collinsville, CT 06022-0168

Proposal of:

Contractor Name:

---

Street Address:

---

City, State, Zip Code

---

The undersigned further declares that he has carefully examined the site of the work, the information for bidders, specifications, drawings and form of contract and will contract to provide all necessary tools, apparatus and implements, freight, cartage and expense, and to do all work and furnish all the materials necessary to construct the proposed work named on the title page in the manner and upon the conditions specified, in accordance with First Class work of this type, and upon the terms which follow herein.

But it is understood and agreed that the prices bid for unit quantities of work in the following items shall control in any contract awarded hereon; that the quantities used are approximate only, being estimated solely for use in comparing bids; and that the following products obtained by multiplying the unit prices bid by the estimated quantities, and the total of those prices are inserted only for the purpose of checking this proposal and for the convenience of the bidder. In the case of error or discrepancies, unit prices govern and written words take precedence over figures.

No bids may be withdrawn for a period of 60 days after the opening of bids without the approval and written consent of the Chief Administrative Officer. If no award has been made within 60 days after the opening of bids, the bid may be withdrawn upon demand of the bidder at any time thereafter, so long as he has not been notified of the acceptance of his bid.

And the undersigned agrees to furnish satisfactory performance and payment bonds with surety, and to execute and deliver, within five days after the notice of the award, a formal contract with the Town of Canton for the fulfillment of this proposal; and it is agreed, in case of failure or neglect on the part of the undersigned to do so, the Town may determine that the bidder has abandoned the contract and thereupon the proposal and acceptance shall be null and void, and at the Town's option the amount of the bond or check accompanying the proposal shall be forfeited to the Town of Canton, or shall be returned to the bidder in whole or in part.

The undersigned further declares that the bidder is:

- a. A CORPORATION organized under the laws of the State of having its principal office at \_\_\_\_\_.

The principal officers of said corporation with their respective titles and address are as follows:

---

---

---

- b. A PARTNERSHIP consisting of the following individuals (with their addresses).

---

---

---

- c. An INDIVIDUAL, by the name of \_\_\_\_\_ and doing business as \_\_\_\_\_.

The bidder is required to state below what work of a similar character to that included in the proposed contract he has done and give reference that will enable the Town to judge his experience, skill and business standing.

---

---

---

The bidder is required to give a brief description of the plant and general methods proposed for carrying on the work indicating there in whether the plant and equipment are owned or to be hired by the bidder.

---

---

---

## **BID PRICES**

### INSTRUCTIONS

Bidder is to write the total amount of their proposal, as applicable, in the blank spaces provided in the Schedule of Bid Prices. Write the lump-sum bid price in figures and also write the lump-sum in letters below the figures.

The Bidder is advised that the description is only a summary. The lump-sum price of the bid shall include all of the items as specified in detail in the contract document.

### INTENT

The intent of these specifications is to design, demo existing wading pool and construct a new Splash-Pad as requested by the Town of Canton utilizing the specified 7 items for this Request for Proposals. These items are intended as general minimum requirements and there may be other items that the designer deems necessary to be able to construct per all applicable regulations.

### SPECIFICATIONS

Specifications for design, demolition and construction are listed below. Bidder is responsible for fully investigating the proposed work and project area before submitting his/her bid.

#### 1. GENERAL SPECIFICATIONS

1. Splash-Pad Design, Demolition & Construction are intended to parallel the industries best management practices and must follow the State of Connecticut Health Code Section 19-13-B33b pertaining to pool/splash-pad design and construction.
2. The proposed splash-pad design will utilize a pumped, filtered & chemically disinfected recirculating potable water system.
3. Proper demolition & disposal of materials is the sole responsibility of the contractor.
4. The splash-pad will be located in the area of the currently existing wading pool as indicated on GIS map and attached hereto as exhibit B and utility map indicated as exhibit C.
5. The new splash-pad area will be approximately 1,350 SF.
6. The proposal shall include installation of spray features and plumbing components (provided by the Town), as shown in Appendix A.
7. The Contractor must have successfully completed at least 3 projects of like magnitude within the last five years and provide contact names and phone numbers along with the bid.
8. All work must be completed and the splash-pad ready for use by May 1<sup>st</sup> 2023.





---

**NOTE:**

**Bidder is reminded that in addition to completing and signing the above proposal and bid form, he/she shall also complete and return with the bid:**

- **Non-Collusion Affidavit**
- **Legal Status Form**
- **Bidder Qualifications**
- **List of References for similar projects**

**END OF BID PRICE**

**TOWN OF CANTON  
BIDDER'S NON-COLLUSION AFFIDAVIT  
RE: Mills Pond Park Splash-Pad Design/Build Project  
Canton, Connecticut**

The undersigned bidder, having fully informed himself/itself regarding the accuracy of the statements made herein, certifies that:

- (1) the bid is genuine; it is not a collusive or sham bid;
- (2) the bidder developed the bid independently and submitted it without collusion with, and without any agreement, understanding, communication or planned common course of action with, any other person or entity designed to limit independent bidding or competition;
- (3) the bidder, its employees and agents have not communicated the contents of the bid to any person not an employee or agent of the bidder and will not communicate the bid to any such person prior to the official opening of the bid; and
- (4) no elected or appointed official or other officer or employee of the Town of Canton is directly or indirectly interested in the bidder's bid, or in the supplies, materials, equipment, work or labor to which it relates, or in any of the profits thereof.

The undersigned bidder further certifies that this statement is executed for the purpose of inducing the Town of Canton to consider its bid and make an award in accordance therewith.

\_\_\_\_\_  
Legal Name of Bidder

\_\_\_\_\_  
(Signature)

Bidder's Representative, Duly  
Authorized

\_\_\_\_\_  
Name of Bidder's Authorized  
Representative

\_\_\_\_\_  
Title of Bidder's Authorized  
Representative

\_\_\_\_\_  
Date

Subscribed and sworn to before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

(Acknowledgement if a Corporation)

State of Connecticut )  
 )  
County of \_\_\_\_\_ ) ss:

On this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me personally came and appeared \_\_\_\_\_ to me known, who, being by me duly sworn, did depose and say that he/she is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in and which executed the foregoing instrument; that he/she knows the seal of the corporation; that one of the impressions affixed to said instrument is an impression of such seal; that it was so affixed by order of the directors of said corporation, and that s/he signed her/his name thereto by like order.

(Notary Seal)

\_\_\_\_\_  
Commissioner of the Superior Court  
Notary Public  
My commission expires:

-----  
(Acknowledgement of a Partnership)

State of Connecticut )  
 )  
County of Hartford ) ss:

On this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me personally came and appeared \_\_\_\_\_ to me known, and known to me to be a partner of the partnership described in and which executed the foregoing instrument and he/she acknowledged to me that he/she executed the same as and for a free act of said partnership.

(Notary Seal)

\_\_\_\_\_  
Commissioner of the Superior Court  
Notary Public  
My commission expires:

-----  
(Acknowledgement of a Proprietorship)

State of Connecticut )  
 )  
County of Hartford ) ss:

On this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me personally came and appeared \_\_\_\_\_ to me known, and known to me to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

(Notary Seal)

---

Commissioner of the Superior Court  
Notary Public  
My commission expires:

**END OF BIDDER'S NON-COLLUSION AFFIDAVIT**

**TOWN OF CANTON, CONNECTICUT  
BIDDER'S LEGAL STATUS DISCLOSURE**

Please fully complete the applicable section below, attaching a separate sheet if you need additional space.

For purposes of this disclosure, "permanent place of business" means an office continuously maintained, occupied and used by the bidder's regular employees regularly in attendance to carry on the bidder's business in the bidder's own name. An office maintained, occupied and used by a bidder only for the duration of a contract will not be considered a permanent place of business. An office maintained, occupied and used by a person affiliated with a bidder will not be considered a bidder's permanent place of business.

**IF A SOLELY OWNED BUSINESS:**

Bidder's Full Legal Name

\_\_\_\_\_

Mailing Address

\_\_\_\_\_

\_\_\_\_\_

Owner's Full Legal Name

\_\_\_\_\_

Does the bidder have a "permanent place of business" in Connecticut, as defined above?

\_\_\_\_\_ Yes      \_\_\_\_\_ No

If yes, please state the full street address (not a post office box) of that "permanent place of business."

\_\_\_\_\_

\_\_\_\_\_

**IF A CORPORATION:**

Bidder's Full Legal Name

\_\_\_\_\_

Mailing Address

\_\_\_\_\_

\_\_\_\_\_

State in which Legally Organized

State Business ID #

Current Officers

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Chief Financial Officer

\_\_\_\_\_  
Vice President

\_\_\_\_\_  
Treasurer

Does the bidder have a "permanent place of business" in Connecticut, as defined above?

\_\_\_\_\_ Yes      \_\_\_\_\_ No

If yes, please state the full street address (not a post office box) of that "permanent place of business."

**IF A LIMITED LIABILITY COMPANY:**

Bidder's Full Legal Name

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
State in which Legally

Organized \_\_\_\_\_

State Business ID #

\_\_\_\_\_  
Current Manager(s) and Members

\_\_\_\_\_  
Name & Title (if any)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Name & Title (if any)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Name & Title (if any)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Name & Title (if any)

\_\_\_\_\_  
Address

Does the bidder have a “permanent place of business” in Connecticut, as defined above?

\_\_\_\_\_ Yes      \_\_\_\_\_ No

If yes, please state the full street address (not a post office box) of that “permanent place of business.”

\_\_\_\_\_  
\_\_\_\_\_

**IF A PARTNERSHIP:**

Bidder’s Full Legal Name  
\_\_\_\_\_

Mailing Address  
\_\_\_\_\_

State in which Legally  
Organized \_\_\_\_\_

State Business ID # (if  
applicable) \_\_\_\_\_

Current Partners



\_\_\_\_\_  
Name & Title (if any)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Name & Title (if any)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Name & Title (if any)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Name & Title (if any)

\_\_\_\_\_  
Address

Does the bidder have a “permanent place of business” in Connecticut, as defined above?

\_\_\_\_\_ Yes      \_\_\_\_\_ No

If yes, please state the full street address (not a post office box) of that “permanent place of business.”

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Bidder’s Full Legal Name

\_\_\_\_\_  
(print) Name and Title of Bidder’s Authorized Representative

\_\_\_\_\_  
(signature) Bidder’s Representative, Duly Authorized

\_\_\_\_\_  
Date

**END OF LEGAL STATUS DISCLOSURE FORM  
STATEMENT OF BIDDER’S QUALIFICATIONS**

All questions shall be answered and information given shall be clear and comprehensive. This statement shall be notarized. If additional room is required to answer questions, please attach additional sheet(s) with the supplemental information. The bidder's name shall appear on the top of the supplemental sheets to avoid confusion. The bidder may submit additional information as it deems necessary to enable the Town to judge the bidder's ability to perform the proposed Contract.

1. Bidder's full legal name:
2. Permanent main office address:
3. Contact person for this Invitation:
4. Phone and fax numbers and e-mail address of the contact person during normal business hours:
5. Date of organization:
6. Date of incorporation, if applicable:
7. Number of years bidder has been engaged in business under present firm or trade name:
8. Contracts on hand (dollar value, anticipated completion date):
9. General character or type of work performed by the bidder:
10. Has the bidder ever failed to complete any work awarded to it? If so, please explain in detail the circumstances:
11. Has the bidder ever defaulted on a contract? If so, please explain in detail the circumstances:
12. List contracts of a similar nature (size, type, and complexity) completed successfully by the bidder within the last five (5) years. List the other contracting party, the value of the contract, and the year completed.
13. List the equipment that will be available for the work described in this Invitation.

14. How many years of experience does the bidder have in work of similar size, type, and complexity to the Work of this Invitation?
15. Describe the background and experience of each individual person listed in the Bidder's Legal Status Disclosure:
16. If necessary for the Town to determine an award of contract, will the bidder provide a detailed financial statement?
17. List all legal disputes (mediation, arbitration or litigation) that the bidder or any predecessor in interest has been involved with in the last five (5) years, the nature of the dispute, the adverse party and the result.

**END OF STATEMENT OF BIDDER'S QUALIFICATIONS**