

PROJECT MANUAL

FOR:

2010 CRC Track Replacement

Wheeling Park District

333 West Dundee Road
Wheeling, Illinois 60090

PH: 847/465-3333

FX: 847/537-2504

Date of Project Manual: Monday, November 1, 2010

Bid Due Date: Thursday, November 11, 2010 at 2:00 p.m.



**2010 CRC Track Replacement
Wheeling Park District**

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ADVERTISEMENT FOR BIDS

Wheeling Park District will receive bids for the purchase and installation of a new **indoor track surface** at the Community Recreation Center in Wheeling, Illinois. Bids are due and will be opened and read aloud on Thursday, November 11, 2010, at 2:00 p.m., in the Boardroom of the Wheeling Park District Community Recreation Center, 333 W. Dundee Road, Wheeling, Illinois.

The scope of work includes installation of a new track surface, per bid specifications, and all other work necessary to complete the project as described in the Project Manual.

The contract documents, including plans and specifications for said work, may be accessed through the website at www.wheelingparkdistrict.com, or obtained free of charge at the Wheeling Park District Community Recreation Center, 333 W. Dundee Road, Wheeling, Illinois, telephone 847/465-3333, Monday through Friday from 9:00 a.m. to 5:00 p.m., beginning Monday, November 1, 2010. General questions may be directed to the Director of Park & Recreation Services at (847) 465-2937. Any Project Manual received, reviewed, or otherwise obtained by a prospective bidder prior to that time will automatically disqualify that potential bidder.

A bid bond, certified check, or cashier's check for not less than ten (10) percent of the total base bid amount will be required for each bid.

This project is subject to payment of the prevailing wage rates. All bidders will be required to certify that they are in compliance with laws governing prevailing wage, bid-rigging, bid rotation, equal opportunity employment, and sexual harassment.

The successful bidder shall be required to furnish satisfactory performance and labor & material payment bond(s) for the total contract amount, including suggested alternates as selected. The successful bidder will also be required to enter into a legal contract. Wheeling Park District expects to enter into an agreement with the successful bidder on or about November 17, 2010, with all work to be completed by December 15, 2010.

No bids may be withdrawn without written consent from the Park District. The Board of Commissioners reserves the right to reject any and all bids, and to waive any formalities in the bidding process if, in its sole judgment, it shall deem it is in the public's best interest to do so.

Published Monday, November 1, 2010, in the *Daily Herald*.

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INSTRUCTIONS TO BIDDERS

A. GENERAL INSTRUCTIONS: Each construction item consists of all labor, materials, and equipment necessary to complete all work called for in the specifications listed in the Project Manual.

B. AWARDING OF BIDS: Sealed Bids will be received until the date and time and at the location as noted in the Advertisement for bids, or as changed via an appropriate Addendum.

Each bid shall be enclosed in a sealed envelope addressed as follows:

BID: 2010 CRC Track Replacement
Wheeling Park District
333 W. Dundee Road
Wheeling, IL. 60090

C. BID GUARANTEE: A Bid Guarantee will be required for each bid submitted, in the form of a bid bond, cashier's check, certified check or money order in the amount of 10% of the base bid amount. The Bid Guarantee shall be made out to the Owner, Wheeling Park District, and shall be used by the Owner as a guarantee that the bidder will not withdraw his bid after the date and time set for the bid opening, and as a guarantee that the successful bidder will comply with insurance, performance, and labor & material payment guarantee requirements as set forth in these Contract Documents.

D. PERFORMANCE GUARANTEE: A performance guarantee will be required of the successful bidder and shall be mailed or delivered to the Owner within ten (10) days of the execution of the Contract. The performance guarantee shall be in the form of a performance and labor/material payment bond(s) in the amount of One Hundred Ten Percent (110%) of the Contract Amount, including alternates as selected by the Owner. The aforementioned bond shall be issued for a 365-day period subsequent to the date of substantial completion, and shall also include the Contract Time, as defined in these Contract Documents. The bond shall be issued by a surety company which is acceptable to the Owner. Upon the Owner's receipt and acceptance of a performance and labor/material payment bond(s), the Owner shall promptly return the Contractor's bid guarantee.

E. ADDENDA: All changes to, and interpretation of, the Contract Documents prior to the date and time set for the opening of bids will be made by Addenda issued by the Director of Park and Recreation Services to each recipient of the bidding documents.

All Addenda, written or graphic, will be issued no later than 24 hours prior to the date and time set for the opening of bids. If the Owner determines that an Addendum will result in a substantial or material variance of the proposed Contract, all bids will be returned, the project re-advertised, and notice of a new bid opening date and time will be included in an Addendum.

F. BIDDING CONDITIONS: Bids shall be submitted on the printed forms provided for that purpose, and shall be bound herewith and must be signed and dated. The bid forms shall be completely filled out, signed, and dated and shall not be detached from their binding. The complete set of documents shall be submitted with the bid proposal, as well as the drawings returned. Bids which are faxed will not be accepted. If the Contractor decides not to bid, he shall return the drawings and contract documents as well.

The Owner reserves the unqualified right to reject any or all bids, or portions thereof, or to accept any bid or combination of bids, which in its sole and absolute judgment will best serve the Owner's or the Public's interest.

In the event that the successful bidder fails to execute the Contract upon his part, or to furnish a satisfactory performance and labor/material payment guarantee, the Owner, after declaring forfeited the guaranty of

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such bidder, reserves the option to accept the bid of any other bidder within thirty days of such default, in which case, such acceptance shall have the same effect as though the alternate bidder were the original successful bidder.

No bids shall be withdrawn within sixty days of the bid opening.

G. CONTRACTOR'S CERTIFICATIONS: Each Bidder shall certify that the Bidder is not barred from bidding on this public contract as a result of violation of Illinois Public Act #85-1295, effective January 1, 1989, section 33E-3 or 33E-4 (Bid Rigging or Bid Rotation). In order for the bid to be valid, the bidding contractor shall attest to this by filling out, signing, and having notarized the attached CONTRACTOR'S CERTIFICATION (BID RIGGING OR ROTATION). Each Bidder shall also certify that the Bidder will abide by all provisions of the Illinois Prevailing Wage Act (820 ILCS 130/1-12 *et seq.*) In order for the bid to be valid, the bidding contractor shall attest to this by filling out, signing, and having notarized the attached CONTRACTOR'S CERTIFICATION (PREVAILING WAGES).

H. PRICES SUBMITTED: The prices submitted on the bid form(s) shall include:

1. The cost of materials, labor, and equipment either specified, or necessary, for the installation as specified.
2. The cost of any material and/or labor which is not specifically described, but which is necessary to complete the Contract.
3. The cost of a full-time qualified foreman for the duration of the Contract.

The Contractor shall examine and fully understand the General Conditions of the project site to verify the quantities of the specified work.

After submitting prices, the Contractor shall not claim any misunderstanding of the amount or nature of material or of the work to be furnished.

I. CONDITIONS OF THE WORK: Each bidder shall personally examine the site conditions and the location of the work, the actual conditions and requirements of the work, including risks, means of access, and limitations of access, conditions of roadways and of bridges, legal restrictions and regulations of municipalities or other legal bodies having jurisdiction over the work. Failure to do so shall not relieve the successful bidder of the Bidder's obligation to furnish labor and materials necessary to carry out the provisions of the Contract Documents, and to complete the contemplated work for the consideration as set forth in their bid. The submittal of a bid proposal shall constitute and imply full knowledge of such conditions and regulations and acceptance of the risks contained therein. The existing CRC Track is located at 333 W. Dundee Road, Wheeling, IL 60090.

J. DISCREPANCIES: During the examination of the Contract Documents, or after the Bidder's visit to the site, should a bidder find any discrepancies, omissions, ambiguities, or conflicts in or among the Contract Documents, or should there be any doubt as to their meaning, the Contractor shall at once bring the question to the attention of the Director of Parks and Recreation Services for answer and interpretation. The Director of Parks and Recreation Services will review the question, and where information sought is not clearly shown in the Contract Documents, he will issue an Addendum to all of the plan holders, in which the interpretation will be made. The Director of Parks and Recreation will make no instructions orally and only written instruction shall be deemed valid. To receive consideration, written requests for interpretation shall be made not later than seventy-two (72) hours prior to that date and time set for the bid opening.

K. BASIS OF PAYMENT: All work items shall be paid for on a lump sum basis at the amount listed on the Bid Form.

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L. QUALIFICATIONS OF BIDDERS: In selecting the Contractor, type of work completed, experience, and financial status of bidders will be considered, as well as the proposals submitted. The lowest total bid submitted may not necessarily win the Contract.

M. SIGNING OF THE CONTRACT: The Owner shall notify the successful bidder within sixty days of the bid opening. A meeting between the successful bidder and the Owner shall be held shortly thereafter for the purpose of executing the Owner-Contractor Agreement and any other documents as specified herein.

N. COMMENCEMENT OF WORK: The Contractor shall begin work per mutual agreement between the Contractor and the Owner.

O. PAGES COMPLETED FOR SUBMITTING BIDS: The bidder shall, for the bid to be considered by the Owner, complete in full all of the following pages, and shall submit each as part of his bid: **all Bid Form Pages, Contractor Certifications, Bidders References and Bid Guarantee.**

P. PAGES COMPLETED PRIOR TO OR AT THE TIME OF EXECUTION OF THE OWNER-CONTRACTOR AGREEMENT: The successful bidder shall complete, by the time of the execution of the Owner-Contractor Agreement, the following pages in order for the Contract to be considered valid by the Owner: **Owner-Contractor Agreement, Performance and labor/material payment guarantee.**

Q. The Wheeling Park District is a tax exempt entity. If requested, the Park District will submit its tax exempt number to material suppliers.

End of section

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BID FORM

Bid to: Wheeling Park District

Date: _____

Bid from

(Company): _____

Address: _____ PH: _____/
_____ FX: _____/
_____ CEL: _____/
_____ PGR: _____/_____

The Undersigned:

1. Acknowledges receipt of:

A. Project Manual for: **2010 CRC Track Replacement**

Dated: _____ Bidder's Signature: _____

B. Addenda no. _____ Dated: _____ Bidder's Signature: _____

Addenda no. _____ Dated: _____ Bidder's Signature: _____

Addenda no. _____ Dated: _____ Bidder's Signature: _____

Addenda no. _____ Dated: _____ Bidder's Signature: _____

2. Has examined the site, means of access, and has examined all of the Contract Documents (Project Manual).

3. Agrees:

A. To hold the bid open for sixty days subsequent to the date of the bid opening.

B. To enter into and execute a Contract with the Owner, if awarded on the basis of this bid, and in connection therewith to:

(1) Furnish all bonds and insurance required by the Contract Documents

(2) Accomplish the Work in accordance with the Contract Documents

(3) Complete the Work within the time requirements as set forth in the Contract Documents.

C. That the Bidder has carefully examined the Instructions to Bidders, the Drawings, and the Project Manual in its entirety, in order to determine how these affect the bid proposal, the forms of the Contract, the required contract bonds, and duration thereof, and that the Bidder has inspected in detail the site of the proposed work, and been familiarized with all of the requirements of construction, and of the governing municipalities under whose jurisdiction the project falls (its codes, ordinances and construction requirements therein), and understands that in making this proposal, the Bidder waives all rights to plead any misunderstanding regarding the same.

D. That if this proposal is accepted, the Bidder is to provide all of the necessary equipment, tools, apparatus, labor, and other means of construction, and to do all of the work and to furnish all of the materials specified in the Contract Documents in the manner and at the time therein prescribed, and in accordance with the requirements set forth.

E. Bid Guarantee: (see Instructions to Bidders).

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F. Performance/Labor and Material Payment Guarantee (see Instructions to Bidders).

G. To commence work as specified in the Instructions to Bidders, and to prosecute the work in such a manner, and with sufficient materials, equipment and labor as will ensure its completion within reasonable time, it being understood and agreed that the completion within such reasonable time is an essential part of this Contract.

H. That as General Contractor, the Bidder proposes to utilize the products and services of the following subcontractors and major suppliers for the completion of the Contract. All other subcontractors, or the substitution of any of those listed below, shall be approved by the Director of Parks and Recreation Services prior to start of their work on the project. If no subcontractors or major suppliers are to be used, indicate "NONE".

(1) _____ PH: ____ / ____
Subcontractor/major supplier

Address

Work to be performed/materials to be supplied

(2) _____ PH: ____ / ____
Subcontractor/major supplier

Address

Work to be performed/materials to be supplied

(3) _____ PH: ____ / ____
Subcontractor/major supplier

Address

Work to be performed/materials to be supplied

I. To give lump sum (ls) total item amounts for each item as described herein, and subject to the conditions as set forth in the Contract Documents.

J. To give the total base bid amount, the total add alternate and/or subtract alternate amounts (if requested) both in words and in figures. The total bid amount in each case shall be the sum of all of the total item amounts as applicable and as described above.

K. Bidders must quote on all items within the proposal form. The owner reserves the right to add or deduct from the total items as the Owner's interest may be best served.

L. The Bidder agrees to perform all of the work in accordance with the Contract Documents, for the following lump sum(s):

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BASE BID

2010 CRC TRACK REPLACEMENT– BASE BID

\$ _____

FOR THE LUMP SUM OF _____ DOLLARS

BID PARAMETERS: Please check each box to acknowledge understanding and compliance of said parameters.

- The bidder hereby agrees to provide all labor, materials, tools and equipment required to complete project construction.
- The bidder has included a construction schedule for this project.
- The Bidder understands that a properly certified check, bank draft, cashier's check or bid bond payable to the Wheeling Park District for not less than ten (10%) percent of the total bid amount will be required for each bid.

Form of Bid Security _____, in the amount of \$_____ is enclosed.

BID WILL BE AWARDED TO LOWEST RESPONSIBLE TOTAL BASE BID AMOUNT WITH ANY ACCEPTED ALTERNATE PACKAGES AND/OR SPECIFIC ITEMS WITHIN THE BID.

Bid from:
(Company:) _____

Address: _____ PH: _____/_____

Bidder's Signature: _____ Date: _____

End of section

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CONDITIONS FOR BIDDING

1. **TAXES:** The Wheeling Park District is a tax exempt entity. If requested, the Wheeling Park District will submit its tax exempt number to material suppliers.

2. **CONTRACTOR'S CERTIFICATION:** Each bidder must certify that he/she is not barred from bidding on this public contract as a result of violation of Section 33E-3 or 33E-4 (bid rigging or bid rotation) with the attached form. The form must be completed, signed and returned with the bid.

2. **PREVAILING WAGES:** Bidders and contractors shall comply with the law as enacted by the State of Illinois, being 820 ILS 130/0.01 et seq. in which the State has enacted an act regulating wages of laborers, mechanics and other workmen employed in public work by the State, County, City or any public body or political subdivision or by any one under contract for public work. A Contractor's Certification has been provided with the Project Manual. The form must be completed, signed and returned with the bid.

3. **SEXUAL HARASSMENT:** The undersigned certifies that as part of the Bidder's bid proposal on the above-referenced Contract, that the Bidder has enacted, and has in full force and effect, a written sexual harassment policy in accordance with the Illinois Human Rights Act ("Act") (775 ILCS 5/1-101 *et seq.*), including at least the following:
 1. A statement on the illegality of sexual harassment;
 2. The definition of sexual harassment under Illinois law;
 3. A description of sexual harassment utilizing examples;
 4. An internal complaint process, including penalties;
 5. The legal recourse, investigative and complaint process available through the Illinois Dept. of Human Rights ("Department") and the Illinois Human Rights Commission ("Commission");
 6. Direction on how to contact the Department and the Commission; and
 7. Protection against retaliation as provided by section 6-101 of the Act

The undersigned further certifies that such policy shall remain in full force and effect throughout the term of this Contract.

4. **EQUAL EMPLOYMENT OPPORTUNITY:** The undersigned certifies that for the entire duration of the work, the Contractor shall conform to all federal and state laws on equal opportunity and fair employment, and to all rules and regulations now or hereafter issued pursuant thereto, including, but not limited to, the Illinois Human Rights Act (Illinois Revised Statutes Chapter 68, par. 1-101 *et seq.*), and an act to prohibit discrimination, etc. (Illinois Revised Statutes Chapter 29, par. 17-24).

5. **CLEAN AIR ACT:** All successful bidders must comply with the provisions, applicable standards, orders or regulations pursuant to the Clean Air Act of 1970.

6. **COPELAND "ANTI-KICK BACK" ACT:** All successful bidders must comply with the Copeland "Anti-kick back" Act (18 U.S.C. 874) as supplemented in the Department of Labor regulations (29 CFR, Part 3).

End of Section

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STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

CONTRACTOR'S CERTIFICATION (BID RIGGING OR BID ROTATION)

Pursuant to Illinois Public Act 85-1295, effective January 1, 1989, the undersigned certifies that he/she is a duly authorized agent of the contract submitting the attached bid to the Wheeling Park District, and that said contractor is not barred from bidding on this public contract as a result of a violation of either Section 33E-3 or 33-E4 of said Act.

Signed this _____ day of _____, 2010.

By: _____

Title: _____

Address: _____

SUBSCRIBED AND SWORN TO before me
this _____ day of _____, 2010.

Notary Public

Signed this _____ day of _____, 2010

By (Signature): _____

Company: _____

Title: _____

Address: _____

Subscribed and sworn to before me this _____ day of _____, 2010.

Notary Public: _____ My commission expires: _____.

End of Section

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STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

CONTRACTOR'S CERTIFICATION (PREVAILING WAGES)

Pursuant to Illinois Prevailing Wage Act (820 ILCS 130/1-12 *et seq.*) the undersigned certifies that he/she is a duly authorized agent of the contract submitting the attached bid to the Wheeling Park District, and that said contractor will abide by all provisions of said Act.

Signed this _____ day of _____, 2010.

By: _____

Title: _____

Address: _____

SUBSCRIBED AND SWORN TO before me
this _____ day of _____, 2010.

Notary Public

Signed this _____ day of _____, 2010

By (Signature): _____

Company: _____

Title: _____

Address: _____

Subscribed and sworn to before me this _____ day of _____, 2010.

Notary Public: _____ My commission expires: _____.

IMPORTANT NOTICE

The most recently ascertainable Prevailing Wage Rate Determination of Cook County is attached to and incorporated in the Contract Documents. Revisions of the following Prevailing Wage Rates are made periodically by the Illinois Department of Labor. As required by the Prevailing Wage Act any and all revisions supersede the Park District's latest determination. Bidders and contractors performing work on this project are responsible for determining the applicable prevailing wage rates at the time of bid submission and performance of Work. Failure of a bidder/contractor to make such determination shall not relieve it of its obligations in accordance with the Contract Documents.

End of Section

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BIDDER'S REFERENCES

The Bidder shall list below information to be used by the Owner for the purpose of contacting Owners, Architects, Landscape Architects and/or Engineers of projects of similar scope and contract amount. A minimum of three references shall be required.

1. Project Name: _____
Project Address: _____
Contract Amount: \$ _____
Owner or Agent: _____ PH: ____/____
Architect, Landscape
Architect or Engineer: _____ PH: ____/____

2. Project Name: _____
Project Address: _____
Contract Amount: \$ _____
Owner or Agent: _____ PH: ____/____
Architect, Landscape
Architect or Engineer: _____ PH: ____/____

3. Project Name: _____
Project Address: _____
Contract Amount: \$ _____
Owner or Agent: _____ PH: ____/____
Architect, Landscape
Architect or Engineer: _____ PH: ____/____

4. Project Name: _____
Project Address: _____
Contract Amount: \$ _____
Owner or Agent: _____ PH: ____/____
Architect, Landscape
Architect or Engineer: _____ PH: ____/____

End of Section

AGREEMENT TO PROVIDE LABOR AND MATERIALS

This Contract for Labor ("Agreement") is made this ___ day of _____, 2010 by and between the Wheeling Park District, Cook and Lake County, Illinois, an Illinois unit of local government (the "Park District") with its principal place of business at _____, Wheeling, Illinois 60090 and _____, a(n) [Corporation/Partnership, Sole Proprietorship/Individual], with its principal place of business at _____ ("Vendor"), collectively the "Parties."

WITNESSETH

That the Park District and Vendor, for the consideration hereinafter named, agree as follows:

1. AGREEMENT

The Vendor shall provide all the labor and any necessary materials required to complete the following work: **(insert project description)**. The work and any materials agreed to be furnished for the Project shall be completed in accordance with the Bid Documents [insert any other specifications or sources of specifications]. The Park District agrees to pay Vendor for the performance of his/her work and the furnishing of any necessary materials in the sum of _____ (\$) in accordance with the payment terms set forth in the Contract Documents.

2. CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement between the Park District and the Vendor and the Legal Notice, Letter to Bidder, General Conditions, Terms and Conditions, Bid Form and Project Manual ("Bid Documents"), any addenda issued prior to the execution of this Agreement and Modifications issued after the execution of this Agreement. Modifications to this Agreement may only be made in writing and endorsed by the Parties. All of the terms, conditions and specifications contained in the Bid Documents are incorporated herein.

The Contract Documents comprise the entire Agreement between the Parties and no statement, promise or inducement made by either party to the other or to the agency of the other party that is not contained in this written Agreement shall be valid or binding.

3. INSURANCE

Insurance shall be provided as required under General Condition ____, or as set forth in Exhibit No. 2, attached hereto.

4. BID BOND

Each proposal shall be accompanied by a properly certified check, bank draft, cashier's check or bid bond payable to the Wheeling Park District for not less than ten (10%) percent of the total bid amount. The Bid Bonds will be returned promptly upon the approved execution of the Contract by the Park District and the Contractor's delivery of the Contract Bonds to the Park District.

5. PERFORMANCE BOND

If the Contract Price set forth above is greater than \$5,000, Vendor shall deposit with the Park District, before commencing any work, an AIA A312-1984 Performance Bond and Payment Bond for 110% of the Contract amount, guaranteeing the faithful performance of the work in accordance with the Contract, the payment of all indebtedness incurred for labor and materials, and guarantee correction of work for a period of one (1) year after final payment. The cost of each bond shall be included in the Contract Price set forth above. The surety must be approved by the Park District and be licensed to conduct business in the State of

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Illinois and be named in the current list of "Surety Companies Acceptable on Federal Bonds," as published in the Federal Register by the Audit Staff, Bureau of Accounts, U.S. Treasury. The Vendor and all subcontractors shall name the Wheeling Park District as an obligee on all bonds. Said bonds shall meet the requirements of the Illinois Public Construction Bond Act, 30 ILCS 550/0.01 et seq. and any future amendments thereto.

6. COMPLETION DATE

The Vendor agrees to complete the work required to complete the Project within [____] days from notice to proceed,] or, [the time of completion set forth in the Bid Form (or other Contract Document)]. Failure to complete the work by the specified date(s) shall constitute a material breach of the Contract entitling the Park District to immediately replace the Vendor at the Park District's sole option.

7. PERFORMANCE OF WORK

Vendor agrees to perform all work in a good and workmanlike manner. Vendor shall not interfere in any way with and shall cooperate fully with other Vendors procured by Park District for the work.

Vendor, on receipt of this contract executed by the Park District, shall immediately place orders for materials and otherwise commence the work immediately. No claim for extras shall be allowed unless such claim shall be first submitted in writing to the Park District and approved in writing by an authorized agent of the Park District. All extras shall be subject to approval pursuant to the Park District's change order process and in accordance with the applicable law.

8. INDEPENDENT CONTRACTOR

Vendor acknowledges that it is an independent contractor; that it alone retains control of the manner of conducting its activities in furtherance of this Contract; that it, as well as any persons or agents as it may employ are not employees of the Park District; and that neither this Contract, nor the administration thereof, shall operate to render or deem either party hereto the agent or employee of the other.

9. INTELLECTUAL PROPERTY OWNERSHIP RIGHTS

The Park District and Vendor agree that the Vendor's preparation of all drawings, designs, specifications, notes and other services rendered in the performance of this Agreement is a service work done for hire and that the ownership of such documents vests in the Park District. The Park District agrees to, and does hereby grant and transfer to the Vendor, an exclusive, royalty-free license to all such data and documents which the Park District may obtain by copyright and of all designs and specifications as to which the Park District may assert any rights or establish any claim under prevailing patent or copyright laws. In the case of future reuse of any of the documents by the Park District, the Vendor's and consultant's name and seal if applicable shall be removed from the reused document(s) and the Vendor and its consultants shall not be liable to the Park District or to third parties for their reuse.

10. LICENSED PROGRAMS

Vendor warrants that, except for third-party products for which Vendor acts as a licensing agent, it owns and possesses all rights and interests in any licensed computer software programs ("Licensed Programs") required to perform this Contract. Vendor further warrants that, except third-party products for which Vendor acts as a sales agent, Park District's use of the Licensed Programs will not infringe upon the United States copyrights, patent rights, trade secrets or other rights of any third party. Vendor agrees to indemnify, defend and hold Park District harmless from and against any loss, cost, damage, liability, or expense (including attorney's fees and other reasonable litigation expenses) suffered or incurred by Park District in connection with any such infringement claim by any third party, provided however that Park District permits Vendor all available information, assistance and authority to enable Vendor to do so. Vendor further warrants that if Park District is enjoined from using the

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Licensed Programs due to an actual or claimed infringement of any United States patent right or copyright or other property right or for any other reason, then at Vendor's option, Vendor shall promptly either: (i) procure for Park District, at Vendor's expense, the right to continue using the Licensed Programs; or (ii) replace or modify the Licensed Programs, at Vendor's expense, so that the Licensed Programs become non-infringing.

11. PAYMENT

Terms for payment are as set forth in the General Conditions in the Bid Documents.

12. ASSIGNMENT

This Agreement is non-assignable in whole or part by the Vendor, and any assignment shall be void without prior written consent of the Park District.

13. WAIVER

Waiver of any of the terms of this Agreement shall not be valid unless in writing and signed by the Parties. The failure of claimant to enforce the provisions of this Agreement or require performance by opponent of any of the provisions, shall not be construed as a waiver of such provisions or affect the right of claimant to thereafter enforce the provisions of this Agreement. Waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach of contract.

14. TIME

Time is of the essence for all matters concerning this Agreement.

15. HUMAN RIGHTS ACT (if project financed by funds from State of Illinois)

Pursuant to Section 2-105 of the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.) ("Rights Act"), all Contractors/Vendors and Subcontractors must have in force and effect a written sexual harassment policy which includes at a minimum the following provisions:

1. a statement of illegality of sexual harassment;
2. the definition of sexual harassment under Illinois law;
3. a description of sexual harassment utilizing examples;
4. an internal complaint process, including penalties;
5. the legal resource, investigative and complaint process available through the Illinois Department of Human Rights ("Department") and the Illinois Human Rights Commission ("Commission");
6. directions on how to contact the Department and the Commission; and
7. protection against retaliation as provided by Section 6-101 of the Rights Act.

The Vendor understands, represents and warrants to the Owner that Vendor and its subcontractors (for which the Vendor takes responsibility to ensure that they comply with the Rights Act) are in compliance with Section 2-105 of the Rights Act and will remain in compliance with Section 2-105 of the Rights Act for the entirety of the work. A violation of Section 2-105 is cause for the immediate cancellation of this Contract. However, any forbearance or delay by the Owner in canceling this Contract shall not be construed as, and does not constitute, Owner's consent to such violation and a waiver of any rights the Owner may have, including without limitation, cancellation of this Contract.

16. TERMINATION

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The Park District may, at any time and in accordance with the Bid Documents, terminate the Contract in whole or in part for the convenience of the Park District and without cause. Termination by the Park District under this section shall be by a notice of termination delivered to the Vendor specifying the extent of the termination and the effective date. Upon receipt of a notice of termination the Vendor shall immediately, in accordance with instructions from the Park District: (1) cease operation as specified in the notice; (2) place no further orders; (3) enter into no further subcontracts for materials, labors, services or facilities except as necessary to complete continued portions of the contract; (4) terminate all subcontracts and orders to the extent they relate to the work terminated; (5) proceed to complete the performance of work not terminated; and, (6) take actions that may be necessary or that the Park District may direct, for the protection and preservation of the terminated work. The Vendor shall recover payment for approved work executed on the terminated portion of the work before the effective date. Vendor shall not be entitled to damages resulting from termination for convenience under this Section.

17. CHOICE OF LAW, BREACH AND REMEDIES

Any suit or action arising under this Contract shall be commenced in the Circuit Court of Cook County, Illinois, but only after exhausting all possible administrative remedies. In any suit or action arising under this Contract, the Park District shall be entitled to an award of reasonable attorney's fees and costs of litigation if Vendor is found liable. Vendor, its successors or assigns shall maintain no suit or action, against Park District on any claim based upon or arising out of this Contract or out of anything done in connection with this Contract unless such action shall be commenced within one year from the Park District's acceptance of the work performed herein. Vendor acknowledges that each provision of this Agreement is important and material to the business and success of the Park District, and agrees that any breach of any provision of this Agreement is a material breach of the Agreement and may be cause for immediate termination of this Agreement. In the event of a breach, Vendor shall also pay to the Park District all damages (including, but not limited to, compensatory, incidental, consequential, and punitive), which arise from the breach, together with interest, costs, and the Park District's reasonable attorney fees.

IN WITNESS WHEREOF the parties hereto have set their respective hands and seals and year first above written.

WHEELING PARK DISTRICT

CONTRACTOR

By:

Print Name

President
Board of Park Commissioners

By:

ATTEST

Its: _____

By:

Secretary
Board of Park Commissioners

End of Section

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

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TABLE OF PARAGRAPHS

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I. CONTRACT DOCUMENTS

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A. DEFINITION: The Contract Documents consist of the Owner-Contractor Agreement, the Conditions of the Contract, Instructions to Bidders, the Drawings, the Specifications, and all Addenda issued prior to, and all Modifications issued after, execution of the Contract.

B. CONTRACT FOR CONSTRUCTION: The Contract Documents form the Contract for Construction. This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create any contractual relationship between the Owner or the Director of Parks and Recreation Services or Architect, and any Subcontractor or Sub-subcontractor.

C. THE WORK: The Work comprises the completed construction required by the Contract Documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

D. THE PROJECT: The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part.

E. EXECUTION, CORRELATION AND INTENT: The Contract Documents shall be signed, in not less than duplicate, by the Owner and Contractor. If either the Owner or the Contractor or both do not sign the Conditions of the Contract, Drawings, Specifications, or any of the other Contract Documents, the Director of Parks and Recreation Services shall identify such Documents.

F. SITE VISITATION: By executing the Contract, the Contractor represents that the Contractor has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his/her observations with the requirements of the Contract Documents.

G. INTENT OF THE CONTRACT DOCUMENTS: The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all.

H. OWNERSHIP AND USE OF DOCUMENTS: All Drawings, Specifications and copies thereof furnished by the Director of Parks and Recreation Services are and shall remain his property. They are to be used only with respect to this project and are not to be used on any other project. Submission or distribution to meet requirements in connection with the Project is not to be construed as publication in derogation of the Director of Parks and Recreation Services's common law copy-right or other reserved rights.

I. PRECEDENCE OF DOCUMENTS: The Contract Documents shall be given precedence in the following order, provided they are in existence at the time of the execution of the Contract: 1. Owner-Contractor Agreement; 2. Contractor's Proposal; 3. Instructions to Bidders; 4. Technical Specifications; 5. Conditions of Contract; 6. Detail Drawings; 7. Large Scale Drawings; 8. General Drawings.

J. DIMENSIONS ON DRAWINGS: The General and Detail Drawings are fully figured and dimensioned, and these figures are to be followed without regard to scaled measurements from Drawings. If figures have been omitted, or if a marked discrepancy exists between figures and scale, the question shall be referred to the Director of Parks and Recreation Services for his final decision.

II. DIRECTOR OF PARKS AND RECREATION SERVICES

A. DEFINITION: The Director of Parks and Recreation Services is the person identified as such in the Owner-Contractor Agreement, and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Director of Parks and Recreation Services means the Director of Parks and Recreation Services or his authorized representative.

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B. ADMINISTRATION OF THE CONTRACT: The Director of Parks and Recreation Services will provide administration of the Contract as hereinafter described.

C. REPRESENTATION: The Director of Parks and Recreation Services in conjunction with the Owner's staff, will be the Owner's representative during construction and until final payment is due. The Director of Parks and Recreation Services will advise and consult with the Owner. The Owner's instructions to the Contract shall be forwarded through the Director of Parks and Recreation Services or the Owner's staff.

D. SITE VISITATION: The Director of Parks and Recreation Services will visit the site at intervals appropriate to the stage of construction to familiarize himself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. However, the Director of Parks and Recreation Services will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of his on-site observations as a Director of Parks and Recreation Services, he will keep the Owner informed of the progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor.

E. NON-RESPONSIBILITIES: The Director of Parks and Recreation Services will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and he will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Director of Parks and Recreation Services will not be responsible for or have control or charge over the acts or omissions of the Contractor, Subcontractors or any of their agents or employees, or any other persons performing any of the Work.

F. SITE ACCESS: The Director of Parks and Recreation Services shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so the Director of Parks and Recreation Services may perform his functions under the Contract Documents.

G. ISSUE OF CERTIFICATES FOR PAYMENT: Based on Director of Parks and Recreation Services observations and an evaluation of the Contractor's Applications for Payment, the Director of Parks and Recreation Services will determine the amounts owing to the Contractor and will issue Certificates for Payment in such amounts as provided in Paragraph IX R.

H. INTERPRETER OF REQUIREMENTS: The Director of Parks and Recreation Services will be the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by both the Owner and Contractor.

I. INTERPRETER FOR EXECUTION OF WORK: The Director of Parks and Recreation Services will render interpretations necessary for the proper execution or progress of the Work, with reasonable promptness and in accordance with any time limit agreed upon. Either party to the Contract may make written request to the Director of Parks and Recreation Services for such interpretations.

J. INTERPRETER OF CLAIMS: Claims, disputes and other matters in question between the Contractor and the Owner relating to the execution or progress of the Work or the interpretation of the Contract Documents shall be referred initially to the Director of Parks and Recreation Services for decision which he will render in writing within a reasonable time.

K. INTERPRETATIONS AND DECISIONS: All interpretations and decisions of the Director of Parks and Recreation Services shall be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. In his capacity as interpreter and judge, he will endeavor to secure faithful performance by both the Owner and the Contractor, will not show partiality to either, and will not be liable for the result of any interpretation or decision rendered in good faith in such capacity.

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L. ARTISTIC EFFECT: The Director of Parks and Recreation Services' decisions in matters relating to artistic effect will be final if consistent with the intent of the Contract Documents.

M. Intentionally Omitted.

N. REJECTION OF WORK: The Director of Parks and Recreation Services will have authority to reject Work which does not conform to the Contract Documents. Whenever, in his opinion, he considers it necessary or advisable for the implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the Work in accordance with Paragraph VII H whether or not such Work be then fabricated, installed or completed. However, neither the Director of Parks and Recreation Services' authority to act under this paragraph N, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Director of Parks and Recreation Services to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

O. CHANGE ORDERS: The Director of Parks and Recreation Services will prepare Change Orders in accordance with XII CHANGES IN THE WORK, and will have authority to order minor changes in the Work as provided in Paragraph XII G.

P. CONSTRUCTION REVIEW: The Director of Parks and Recreation Services will review construction to determine the dates of Substantial Completion and Final Completion, will receive and forward to the Owner for the Owner's review written documents required by the Contract and assembled by the Contractor, and will issue a final certificate of payment upon compliance with the requirements of Paragraph IX P.

III. OWNER

A. DEFINITION: The Owner is the person or entity identified as such in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Owner means the Owner or his authorized representative.

B. SURVEYS: The Owner shall furnish all surveys describing the physical characteristics, legal limitations and utility locations for the site of the Project and a legal description of the site.

C. INFORMATION: Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work.

D. DRAWINGS AND SPECIFICATIONS: Unless otherwise provided in the Contract Documents, the Contractor will be furnished free of charge all copies of Drawings and Specifications reasonably necessary for the execution of the Work.

E. INSTRUCTIONS: The Owner shall forward all instructions to the Contractor through the Director of Parks and Recreation Services, or if instructions are given directly to the Contractor, the Owner shall notify the Director of Parks and Recreation Services.

F. DUTIES: The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to work by Owner or by Separate Contractors, Payments and Completion, and Insurance in Articles VI, IX and XI, respectively.

G. OWNER'S RIGHT TO STOP THE WORK: If the Contractor fails to correct defective Work as required by Paragraphs XIII--C and D or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner, by a written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall

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not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Paragraph VI C.

IV. CONTRACTOR

A. DEFINITION: The Contractor is the person or entity identified as such in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Contractor means the Contractor or his authorized representative.

B. REVIEW OF CONTRACT DOCUMENTS: The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Director of Parks and Recreation Services any error, inconsistency or omission he may discover. The Contractor shall not be liable to the Owner or the Director of Parks and Recreation Services for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents. The Contractor shall perform no portion of the Work at any time without Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work.

C. SUPERVISION AND CONSTRUCTION PROCEDURES: The Contractor shall supervise and direct the Work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

D. RESPONSIBILITY FOR ACTS AND OMISSIONS:

1. The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Contractor.

2. The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Director of Parks and Recreation Services in his administration of the Contract, or by inspections, tests or approvals required or performed under Paragraph VII G by persons other than the Contractor.

E. LABOR AND MATERIALS: Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

F. DISCIPLINE: The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him.

G. WARRANTY: The Contractor warrants to the Owner and the Director of Parks and Recreation Services that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Director of Parks and Recreation Services, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

H. TAXES: The Contractor shall pay all sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted at the time bids are received, whether or not yet affective.

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I. LAWS AND REGULATIONS: The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.

J. APPLICABLE LAWS AND STATUTES: It is not the responsibility of the Contractor to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Director of Parks and Recreation Services in writing, and any necessary changes shall be accomplished by appropriate Modification.

K. NOTIFICATION OF LAWS: If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Architect, he shall assume full responsibility therefore and shall bear all costs attributable thereto.

L. SUPERINTENDENT: The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.

M. PROGRESS SCHEDULE: The Contractor, immediately after being awarded the Contract shall prepare and submit for the Owner's and Architect's information an estimated progress schedule for the Work. The progress schedule shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

N. DOCUMENTS AND SAMPLES AT THE SITE: The Contractor shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be available to the Director of Parks and Recreation Services and shall be delivered to him for the Owner upon completion of the Work.

O. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES:

1. Shop Drawings are drawings, diagrams, schedules and other data specifically prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

2. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.

3. Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

P. REVIEW OF SHOP DRAWINGS AND SAMPLES: The Contractor shall review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of the Owner or any separate contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents.

Q. APPROVAL AND SUBMISSION: By approving and submitting Shop Drawings, Product Data and Samples, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

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R. OR EQUAL CLAUSE: Certain items of materials are specified in these specifications by proprietary name. Where the clause "or equal" or "or equal to" is used in connection with such specifications, they are so used in recognition of the fact that equally good and functionally similar items are on the market. Should the Contractor desire to make substitution under this clause, he shall submit in writing to the Director of Parks and Recreation Services his request for approval of such substitution, together with such specifications, descriptive literature and samples as the Director of Parks and Recreation Services may require. If the Director of Parks and Recreation Services determines that the required equality exists, he will give written authorization to the Contractor to make the requested substitution. Otherwise the name article shall be used, without substitution. Where the "or Equal" clause is not used, the name article will be used.

S. USE OF SITE: The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with any materials or equipment.

T. CLEANING UP: The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials.

U. FAILURE TO CLEAN UP: If the Contractor fails to clean up at the completion of the Work, the Owner may do so and the cost thereof shall be charged to the Contractor.

V. COMMUNICATIONS: The Contractor shall forward all communications to the Owner through the Director of Parks and Recreation Services.

W. ROYALTIES AND PATENTS: The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified, but if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Director of Parks and Recreation Services.

X. INDEMNIFICATION: To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and the Director of Parks and Recreation Services and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising from or resulting from the performance of the Work, providing that any such claim, damage, loss or expenses (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph X.

Y. CLAIMS AND LIMITATIONS: In any and all claims against the Owner or the Director of Parks and Recreation Services or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph Y shall not be limited in any way by any limitation on

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the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or under employee benefit acts.

Z. OBLIGATIONS: The obligations of the Contractor under this Paragraph Z shall not extend to the liability of the Director of Parks and Recreation Services, his agents or employees, arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications.

V. SUBCONTRACTORS

A. DEFINITION: A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the Work at the site. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor does not include any separate contractor or his subcontractors.

B. SUB-SUBCONTRACTORS: A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the Work at the site. The term Sub-subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Sub-subcontractor or an authorized representative thereof.

C. AWARD OF SUBCONTRACTORS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK: Unless otherwise required by the Contract Documents or the Bidding Documents, the Contractor, as soon as practicable after the award of the Contract, shall furnish to the Owner and the Director of Parks and Recreation Services in writing the names of the persons or entities proposed for each of the principal portions of the Work. The Director of Parks and Recreation Services will promptly reply to the Contractor in writing stating whether or not the Owner or the Director of Parks and Recreation Services, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Director of Parks and Recreation Services to reply promptly shall constitute notice of no reasonable objection.

D. NO CONTRACT CONSIDERATIONS: The Contractor shall not contract with any such proposed person or entity to whom the Owner or the Director of Parks and Recreation Services has made reasonable objection under the provisions of Subparagraph V - C. The Contractor shall not be required to contract with anyone to whom he has a reasonable objection.

E. NO SUBSTITUTION CONSIDERATIONS: The Contractor shall make no substitution for any Subcontractor, person or entity previously selected if the Owner or Director of Parks and Recreation Services makes reasonable objection to such substitution.

F. SUBCONTRACTUAL RELATIONS: By an appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Documents, assumes toward the Owner and the Director of Parks and Recreation Services. Said agreement shall preserve and protect the rights of the Owner and the Director of Parks and Recreation Services under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow the Subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this

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Paragraph, and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to his Sub-subcontractor.

VI. WORK BY OWNER OR BY SEPARATE CONTRACTORS

A. OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS: The Owner reserves the right to perform work related to the Project with his own forces, and to award separate contracts in connection with other portion of the Project or other work on the site under these or similar Conditions of the Contract. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, he shall make such claim as provided elsewhere in the Contract Documents. Also see Supplementary Conditions, paragraph G.

B. SEPARATE CONTRACTS: When separate contracts are awarded for different portions of the Project or other work on the site, the term Contractor in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

C. COORDINATION OF WORK: The Owner will provide for the coordination of the work of his own forces and of each separate contractor with the Work of the Contractor, who shall cooperate therewith as provided in Paragraph VI D. Also see Supplementary Conditions, paragraph G.

D. MUTUAL RESPONSIBILITY:

1. If any part of the Contractor's Work depends for proper execution of results upon the work of the Owner or any separate contractor, the Contractor shall, prior to proceeding with the Work, promptly report to the Director of Parks and Recreation Services any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acceptance of the Owner's or separate contractors' work as fit and proper to receive his Work, except as to defects which may subsequently become apparent in such work by others.

2. Any costs caused by defective or ill-timed work shall be borne by the party responsible therefore.

3. Should the Contractor wrongfully cause damage to the work or property of the Owner, or to other work on the site, the Contractor shall promptly remedy such damage as provided in Paragraph X E.

4. Should the Contractor wrongfully cause damage to the work or property of any separate contractor, the Contractor shall upon due notice promptly attempt to settle with such other contractor by agreements, or otherwise to resolve the dispute. If such separate contractor sues or initiates an arbitration proceeding against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall defend such proceedings at the Owner's expense, and if any judgment or award against the Owner arises therefrom the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court or arbitration costs which the Owner has incurred.

E. OWNER'S RIGHT TO CLEAN UP: If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up as required by Paragraph IV T and IV U, the Owner may clean up and charge the cost thereof to the contractors responsible therefore as the Director of Parks and Recreation Services shall determine to be just.

VII. MISCELLANEOUS PROVISIONS

A. GOVERNING LAW: The Contract shall be governed by the law of the place where the Project is located.

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B. SUCCESSORS AND ASSIGNS: The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to him hereunder, without the previous written consent of the Owner.

C. WRITTEN NOTICE: Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered mail or certified mail to the last business address known to him who gives the notice.

D. CLAIMS FOR DAMAGES: Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

E. PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND: The Owner shall have the right to require the Contractor to furnish bonds covering the faithful performance of the Contract and the payment of all obligations arising thereunder if and as required in the Bidding Documents or in the Contract Documents.

F. RIGHTS AND REMEDIES:

1. The duties and obligations imposed by the Contract Documents and the right and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

2. No action or failure to act by the Owner, Director of Parks and Recreation Services or Contractor shall constitute a waiver or any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

G. TESTS: If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the Director of Parks and Recreation Services timely notice of its readiness so the Director of Parks and Recreation Services may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals conducted by public authorities. Unless otherwise provided, the Owner shall bear all costs of other inspections, tests or approvals.

H. SPECIAL INSPECTION:

1. If the Director of Parks and Recreation Services determines that any Work requires special inspection, testing, or approval which Paragraph VII G does not include, he will, upon written authorization from the Owner, instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Paragraph VII G. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof, including compensation of the Director of Parks and Recreation Services' additional services made necessary by such failure; otherwise the Owner shall bear such costs, and an appropriate Change Order shall be issued.

2. Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered by him to the Architect.

VIII. TIME

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A. DEFINITION: Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Substantial Completion of the Work as defined in Paragraph VIII C, including authorized adjustments thereto.

B. COMMENCEMENT OF THE WORK: The date of commencement of the Work is the date established in the Owner-Contractor Agreement or such other date as may be established therein. This date is anticipated to be on or about November 17, 2010.

C. SUBSTANTIAL COMPLETION: The date of substantial completion of the Work is the Date certified by the Director of Parks and Recreation Services when construction is complete, in accordance with the Contract Documents, so the Owner can occupy the Work or designated portion thereof for the use for which it is intended. This date is anticipated to be on or about December 5, 2010. In no case may substantial completion of the work be later than December 15, 2010.

D. DAY: The term day as used in the Contract Documents shall mean calendar day unless otherwise specifically designated.

E. PROGRESS AND COMPLETION: All time limits stated in the Contract Documents are of the essence of the Contract.

F. DELAYS AND EXTENSIONS OF TIME: If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner or the Director of Parks and Recreation Services, or by any employee of either, or by any separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipated, unavoidable casualties, or any causes beyond the Contractor's control, or by delay authorized by the Owner pending arbitration, or by any other cause which the Director of Parks and Recreation Services determines may justify the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Director of Parks and Recreation Services may determine.

G. REQUEST FOR EXTENSION OF TIME: Any claim for extension of time shall be made in writing to the Director of Parks and Recreation Services not more than three (3) days after the commencement of the delay; otherwise it shall be waived. In the case of a continuing delay only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work.

H. RECOVERY OF DAMAGES: The Paragraph does not exclude the recovery of damages for delay by either party under other provisions of the Contract Documents.

IX. PAYMENTS AND COMPLETION

A. CONTRACT SUM: The Contract Sum is stated in the Owner-Contractor Agreement and, including authorized adjustments thereto, is the total amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents.

B. PARTIAL PAYMENTS: The Contractor shall, prior to the thirtieth (30th) day of each month, submit an invoice in accordance with the amount of work performed and the value of the work in accordance with the Contract Prices.

C. APPLICATIONS FOR PAYMENT: At least five (5) days before the date for each progress payment, the Contractor shall submit to the Director of Parks and Recreation Services an itemized Application for Payment, supported by such data substantiating the Contractor's right to payment as the Owner or the Director of Parks and Recreation Services may require, and reflecting retainage of ten percent (10%), as provided elsewhere in the Contract Documents.

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D. SUBSTANTIATING DATA: The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in IX - PAYMENTS AND COMPLETION as "liens"; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or any encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

E. INVOICE SUBMITTAL: All invoices and waivers of lien shall be submitted in duplicate, made out to the Owner but sent to the Director of Parks and Recreation Services for consideration and approval. With each invoice, the Contractor shall include waivers-of-lien from all parties concerned, and voucher tickets for verification of any bulk materials delivered to the site.

F. CERTIFICATES FOR PAYMENT:

1. The Director of Parks and Recreation Services will promptly issue a Certificate for Payment to the Owner, with a copy to the Contractor, for such amount as the Director of Parks and Recreation Services determines is properly due, or notify the Contractor in writing his reasons for withholding a Certificate as provided in Paragraph IX - M.

2. The issuance of a Certificate for Payment will constitute a representation by the Director of Parks and Recreation Services to the Owner, based on his observations at the site as provided in Paragraph II - D, and the data comprising the Application for Payment, that the Work has progressed to the point indicated; that, to the best of his knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents; and that the Contractor is entitled to payment in the amount certified. However, by issuing a Certificate for Payment, the Director of Parks and Recreation Services shall not thereby be deemed to represent that he has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work or that he has reviewed the construction means, methods, techniques, sequences or procedures, or that he has made any examination to ascertain how or for what purpose the Contractor has used the moneys previously paid on account of the Contract Sum.

G. PERCENTAGE WITHHELD: Upon Invoice Approval, the Director of Parks and Recreation Services will certify up to ninety percent (90%) of the total Construction Contract. The Owner will pay net amount, less sums previously paid within thirty (30) days of certification.

H. PROGRESS PAYMENTS: After the Director of Parks and Recreation Services has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents.

I. PAYMENT TO SUBCONTRACTOR: The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's Work. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to his Sub-subcontractors in similar manner.

J. PERCENTAGES OF COMPLETION: The Director of Parks and Recreation Services may, on request and at his discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Director of Parks and Recreation Services on account of Work done by such Subcontractor.

K. OBLIGATIONS: Neither the Owner nor the Director of Parks and Recreation Services shall have any obligation to pay or to see to the payment of any moneys to any Subcontractor except as may otherwise be required by law.

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L. ACCEPTANCE: No Certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

M. PAYMENTS WITHHELD: The Director of Parks and Recreation Services may decline to certify payment and may withhold his Certificate in whole or in part, to the extent necessary reasonably to protect the Owner, if in his opinion he is unable to make representations to the Owner as provided in Paragraph IX F. If the Director of Parks and Recreation Services is unable to make representations to the Owner as provided in Paragraph IX F and to certify payment in the amount of the Application, he will notify the Contractor as provided in Paragraph IX F. If the Contractor and the Director of Parks and Recreation Services cannot agree on a revised amount, the Director of Parks and Recreation Services will promptly issue a Certificate for Payment for the amount for which he is able to make such representations to the Owner. The Director of Parks and Recreation Services may also decline to certify payment or, because of subsequently discovered evidence of subsequent observations, he may nullify the whole or any part of any Certificate for Payment previously issued, to such extent as may be necessary in his opinion to protect the Owner for loss because of:

1. defective work not remedied,
2. third party claims filed or reasonable evidence indicating probable filing of such claims,
3. failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment,
4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum,
5. damage to the Owner of another contractor,
6. reasonable evidence that the Work will not be completed within the Contract Time, or
7. persistent failure to carry out the Work in accordance with the Contract Documents.

N. PAYMENTS FOR AMOUNTS WITHHELD: When the above grounds in Paragraph IX - M are removed, payment shall be made for amounts withheld because of them.

O. FAILURE OF PAYMENT: If the Director of Parks and Recreation Services does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven (7) days after the date established in the Contract Documents any amount certified by the Director of Parks and Recreation Services or awarded by arbitration, then the Contractor may, upon seven (7) additional days' written notice to the Owner and the Director of Parks and Recreation Services, stop the Work until payment of the amount owing has been received. The Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which shall be effected by appropriate Change Order in accordance with Paragraph XII - F.

P. FINAL COMPLETION AND FINAL PAYMENT: Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Director of Parks and Recreation Services will promptly make such inspection and, when he finds the Work acceptable under the Contract Documents and the Contract fully performed, he will promptly issue a Final Certificate for Payment, which will include the ten percent (10%) retainer withheld from previous invoices.

Q. Intentionally Omitted.

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R. DELAY OF COMPLETION: If final completion is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting final completion, and the Director of Parks and Recreation Services confirms, the Owner shall, upon application by the Contractor and certification by the Director of Parks and Recreation Services, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for work not fully completed or corrected is less than the retainer stipulated in the Contract Documents, and if bonds have been furnished as provided in Paragraph VII - E, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Director of Parks and Recreation Services prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

S. EXCEPTIONS TO WAIVERS: The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

1. unsettled liens,
2. faulty or defective Work appearing after Substantial Completion,
3. failure of the Work to comply with the requirements of the Contract Documents, or
4. terms of any special warranties required by the Contract Documents.

T. ACCEPTANCE OF FINAL PAYMENT AS WAIVER: The acceptance of final payment as waiver shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final Application for Payment.

X. PROTECTION OF PERSONS AND PROPERTY

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

B. SAFETY OF PERSONS AND PROPERTY: The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

1. all employees on the Work and all other persons who may be affected thereby;
2. all the Work and all materials and equipment to be incorporated therein, whether in storage on or at the site, under the care, custody or control of the Contractor or any of his subcontractors or sub-subcontractors; and
3. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

C. SAFEGUARDS: The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

D. STORAGE: When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

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E. REMEDY OF DAMAGES: The Contractor shall promptly remedy all damage or loss to any property referred to in X B-2 and X B-3 caused in whole or in part by the Contractor, any Subcontractor, or any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under X B-2 and X B-3 except damage or loss attributable to the acts or omissions of the Owner or Director of Parks and Recreation Services or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to his obligations under Paragraph IV X.

F. PREVENTION OF ACCIDENTS: The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and the Director of Parks and Recreation Services.

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

H. EMERGENCIES: In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Paragraph XII, for Changes in the Work.

XI. INSURANCE

A. CONTRACTOR'S LIABILITY INSURANCE: The Contractor shall purchase and maintain such insurance as will protect him from claims as set forth below when such claims may arise out of, or result from the Contractor's operations under the contract, whether such operations be by himself or by any 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' or workmen's compensation, disability benefit and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;
3. claims for damages because of bodily injury, sickness or disease or death of any person other than his employees;
4. claims for damages insured by usual personal injury liability coverage which are sustained a.) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or b.) by any other person.
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and
6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. LIMITS OF LIABILITIES: The insurance required by Paragraph XI A shall be written for not less than any limits of liability specified in the Contract Documents, or required by law, whichever is greater.

C. CONTRACTUAL LIABILITY INSURANCE: The insurance required by Paragraph XI A shall include contractual liability insurance applicable to the Contractor's obligations under Paragraph IV X.

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D. FILING CERTIFICATES: Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These Certificates shall contain a provision that coverages afforded under the policies will not be canceled until at least thirty (30) days' prior written notice has been given to the Owner.

E. WAIVER OF RIGHTS: The Owner and Contractor waive all rights against:

1. each other and Subcontractors, sub-subcontractors, agents and employees each of the other, and
2. the Director of Parks and Recreation Services and separate contractors, if any, and their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Paragraph E, or any other property insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance held by the Owner as trustee. The foregoing waiver afforded the Director of Parks and Recreation Services, his agents or employees shall not extend to the liability imposed by Paragraph IV Z. The Owner or the Contractor, as appropriate shall require of the Director of Parks and Recreation Services, separate Contractors, Subcontractors, and Sub-subcontractors by appropriate agreements, written where legally required for validity, similar waivers each in favor of all other parties enumerated in this Paragraph E.

F. OCCUPATION PRIOR TO COMPLETION: If the Owner finds it necessary to occupy or use a portion or portions of the Work prior to Completion thereof, such occupancy or use shall not commence prior to a time mutually agreed to by the Owner and Contractor and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. This insurance shall not be canceled or lapsed on account of such partial occupancy or use shall not be unreasonably withheld.

XII. CHANGES IN THE WORK

A. CHANGE ORDERS: A Change Order is a written order to the Contractor signed by the Owner or the Director of Parks and Recreation Services, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. A Change Order signed by the Contractor indicates his agreement therewith, including the adjustment in the Contract Sum or the Contract Time.

B. CHANGES IN THE WORK: The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the Work shall be by authorized Change Order, and shall be performed under the applicable conditions of the Contract Documents.

C. COST OR CREDIT: The cost or credit to the Owner resulting from a change in the Work shall be determined in one or more of the following ways:

1. by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation:
2. by cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee.

D. CONCEALED CONDITIONS: Should concealed conditions encountered in the performance of the Work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents, or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally

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recognized as inherent in work of the character provided for in this Contract, be encountered, the Contract Sum shall be equitably adjusted by Change Order upon claim by either party made within twenty (20) days after the first observance of the conditions.

F. CLAIMS FOR ADDITIONAL COST: If the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the Director of Parks and Recreation Services written notice thereof within twenty (20) days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with Paragraph X H. No such claim shall be valid unless so made. If the Owner and the Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined by the Director of Parks and Recreation Services. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

G. MINOR CHANGES IN THE WORK: The Director of Parks and Recreation Services will give authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

XIII. UNCOVERING AND CORRECTION OF WORK

A. UNCOVERING OF WORK: If any portion of the Work should be covered contrary to the request of the Director of Parks and Recreation Services or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Director of Parks and Recreation Services, be uncovered for his observation and shall be replaced at the Contractor's expense.

B. PAYMENT: If any other portion of the Work has been covered which the Director of Parks and Recreation Services has not specifically requested to observe prior to being covered, the Director of Parks and Recreation Services may request to see such Work and it shall be uncovered by the Contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it be found that this condition was caused by the Owner or a separate contractor as provided in VI. WORK BY OWNER OR BY SEPARATE CONTRACTORS, in which event the Owner shall be responsible for the payment of such costs.

C. CORRECTION OF WORK: The Contractor shall promptly correct all Work rejected by the Director of Parks and Recreation Services as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the Director of Parks and Recreation Services's additional services made necessary thereby.

D. CORRECTION OF DEFECTIVE WORK: If, within one year after the Date of Completion of the Work or designated portion thereof or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This obligation shall survive termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

E. REMOVAL: The Contractor shall remove from the site all portions of the Work which are defective or non-conforming and which have not been corrected under Paragraphs IV G, XIII C and XIII D, unless removal is waived by the Owner.

F. CORRECTION BY OWNER: If the Contractor fails to correct defective or non-conforming Work as provided in Paragraphs IV G, XIII C, and XIII D, the Owner may correct it.

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G. COST OF DAMAGES: The Contractor shall bear the cost of making good all work of the Owner or separate contractors destroyed or damaged by such correction or removal.

H. PERIOD OF LIMITATION: Nothing contained in Paragraphs XIII C, XIII D, XIII E, XIII F and XIII G shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph IV G hereof. The establishment of the time period of one (1) year after the Date of Substantial Completion or such longer period of time as may be prescribed by law relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations other than specifically to correct the Work.

I. ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK: If the Owner prefers to accept defective or non-conforming Work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

XIV. TERMINATION OF THE CONTRACT

A. TERMINATION BY THE CONTRACTOR: If the Work is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, or if the Work should be stopped for a period of thirty (30) days by the Contractor because the Director of Parks and Recreation Services has not issued a Certificate for Payment as provided in Paragraph IX O, or because the Owner has not made payment thereon as provided in Paragraph IX O, the Contractor may, upon seven (7) additional days' written notice to the Owner and the Director of Parks and Recreation Services, terminate the Contract and recover from the Owner payment for all Work executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit and damages.

B. TERMINATION BY THE OWNER: If the Contractor is adjudged a bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency or if he persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of substantial violation of a provision of the Contract Documents, then the Owner, upon certification by the Director of Parks and Recreation Services that sufficient cause exists to justify such action, may without prejudice to any right or remedy and after giving the Contractor and his surety, if any, forty-eight (48) hours written notice, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method he may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished.

C. UNPAID BALANCE OF THE CONTRACT SUM: If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including compensation for the Director of Parks and Recreation Services's additional services made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner, upon application in the manner provided in Paragraph IX - E, and this obligation for payment shall survive the termination of the Contract.

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XV. OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such a seven-day period give the Contractor a second written notice to correct such deficiencies with second seven-day period. If the Contractor within such second seven-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Director of Parks and Recreation Services' additional services and expenses made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Director of Parks and Recreation Services. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

End of section

SUPPLEMENTARY CONDITIONS TO THE GENERAL CONDITIONS

SUPPLEMENTS: The following supplements modify, change, delete from or add to the Contract Documents. Where any Paragraph of the General Conditions is modified or any Subparagraph or Clause thereof is modified or deleted by these supplements, the unaltered provisions of that Paragraph, Subparagraph or Clause shall remain in effect.

A. PROGRESS AND COMPLETION

1. The work embraced in this Contract shall begin as specified in the Instructions to Bidders, IB-1, Paragraph "N."
2. Work shall be executed regularly, diligently, and uninterruptedly at such rate of progress as will ensure 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 completion of the Work described herein is a reasonable time for the completion of the Work, taking into consideration the average climatic range and the work to be completed by the Owner.

B. INSURANCE

1. The Certificate of Insurance as required by the General Conditions of the Contract for Construction shall be submitted to the Owner as specified. The Contractor shall cause to have an endorsement contained naming the Owner and the Director of Parks and Recreation Services as an additional named insured. Insurance required by the Paragraph shall be written with an insurance company having at least an "A" First Division of ratings and "AAA" Second Division Ratings as listed in the Best's Insurance Guide, latest edition. Also see page CC- 1 paragraph B.

2. During the term of the Contract, the Contractor shall, at his own expense, purchase and maintain insurance in accordance with the General Conditions of the Contract for Construction and as follows:

a) WORKMEN'S COMPENSATION

- 1) Basic policy including occupational disease - Statutory Limits.
- 2) Employer's Liability at least \$1,000,000 each accident.
- 3) Contractors having offices or places of hire outside the State of Illinois shall attach or otherwise show an "All States" endorsement.

b) PUBLIC LIABILITY

- | | |
|--------------------|---|
| 1) Minimum Limits: | \$1,000,000 each person - Bodily Injury |
| | \$1,000,000 each occurrence - Bodily Injury |
| Property Damage: | \$1,000,000 each person |
| | \$1,000,000 each occurrence |

2) Included Coverage (shall be in comprehensive form):

- (a) Premises and Operations
- (b) Independent Contractors
- (c) Contractual
- (d) Completed Operation (continued coverage in force for 1 year after completion of work)
- (e) Bodily Injury - include Personal Injury
- (f) Property Damage - remove "XCU" Exclusion
- (g) Scaffolding Act Liability

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C. WATER FOR IRRIGATION

The Contractor shall be responsible for arranging for water access with the Village of Wheeling for water, meter, usage fees, etc. The Contractor shall provide all necessary watering equipment, devices, etc.

D. CLEANING UP THE CONSTRUCTION SITE

1. The construction site must be kept reasonable neat and free of materials which could cause an accident.
2. The Contractor is expected to clean up the site:
 - a. at the end of each work day
 - b. at the completion of each area
 - c. at the completion of the Contract.

E. COMPLIANCE WITH CONSTRUCTION CODES

Compliance with the following construction codes is a requirement of these Contract Documents, and the Contractor shall include provisions of such code(s) in his bid, whether or not such code(s) are specifically referenced in the documents. It shall be the bidder's responsibility and that of his Subcontractors to familiarize himself with the following codes and to include compliance provisions in his bid.

- 1) BOCA NATIONAL BUILDING CODE (latest revision)
(With Amendments)
- 2) BOCA NATIONAL MECHANIC CODE (latest revision)
(With Amendments)
- 3) BOCA NATIONAL FIRE PROTECTION CODE (latest revision)
(With Amendments)
- 4) CABO ONE AND TWO FAMILY DWELLING CODE (latest revision)
(With Amendments)
- 5) N.E.C. NATIONAL ELECTRIC CODE (latest revision)
- 6) STATE OF ILLINOIS PLUMBING CODE (latest revision)
(With Amendments)
- 7) BOCA NATIONAL PROPERTY MAINTENANCE CODE (latest revision)
(With Amendments)

End of section

CRC TRACK REPLACEMENT SPECIFICATIONS

Equipment is specified as a MONDO (see bid purchase form) in order to designate a high level and standard of quality and capabilities that the District is seeking to purchase. Bidder may substitute an equivalent alternative.



SECTION 09 65 66 Resilient Athletic Flooring

1 PART 1 – GENERAL

1.1 SUMMARY

1.1.1 Products Supplied

- A. Resilient (rubber) athletic track surfacing.
- B. Adhesive and accessories required for installation, maintenance and repair.

1.1.2 Related Requirements

- A. Section 02 25 00 – Existing Material Assessment
- B. Section 03 05 00 – Common Work Results for Concrete
- C. Section 06 05 00 – Common Work Results for Wood, Plastics, and Composites
- D. Section 07 05 00 – Common Work Results for Thermal and Moisture Protection
- E. Section 07 10 00 – Dampproofing and Waterproofing

1.2 REFERENCES

1.2.1 American Society for Testing & Materials (ASTM)

- A. ASTM D2047: Standard Test Method for Static Coefficient of Friction of Polish-Coated Floor Surfaces as measured by the James Machine.
- B. ASTM D2240: Standard Test Method for Rubber Property (Durometer Hardness).



- C. ASTM D3389-05: Standard Test Method for Coated Fabrics Abrasion Resistance (Rotary Platform Abrader).
- D. ASTM F925-02: Standard Test Method for Resistance to Chemicals of Resilient Flooring.
- E. ASTM D5116: Standard Guide for Small-Scale Environmental Chamber Determinations of Organic Emissions from Indoor Materials/Products.
- F. ASTM E648: Standard Test Method for Critical Radiant Flux of Floor Covering Systems Using a Radiant Heat Energy Source.
- G. ASTM E662: Standard Test Method for Specific Optical Density of Smoke Generated by Solid Materials.
- H. ASTM E1745: Standard Specification for Water Vapor Retarders Used in Contact with Soil or Granular Fill under Concrete Slabs.
- I. ASTM F970: Standard Test Method for Static Load Limit.
- J. ASTM F1869: Standard Test Method for Measuring Moisture Vapor Emission Rate of Concrete Subfloor Using Anhydrous Calcium Chloride.
- K. ASTM G21: Standard Practice for Determining Resistance of Synthetic Polymeric Materials to Fungi.
- L. ASTM F710: Standard Practice for Preparing Concrete Floors to Receive Resilient Flooring.

1.2.2 International Association of Athletics Federation (IAAF)

- A. Inspection and testing procedures based on the current edition of the IAAF Track and Field Facilities Manual.

1.2.3 Deutsches Institut für Normung (DIN)

- A. DIN 180383/2 – Force Reduction IAAF%.

1.2.4 National Fire Protection Association

- A. NFPA 101: Life Safety Code®.

1.2.5 International Organization for Standardization (ISO)

- A. ISO 9001: Requirements for Quality Management Systems.
- B. ISO 14001: Requirements with Guidance for Use for Environmental Management Systems.

1.3 SUBMITTALS

1.3.1 Action Submittals

- A. Provide Manufacturer's current printed data sheets on specified products (surfacing product, adhesives, accessories, etc.).



- B. Provide samples, 6 inches x 6 inches, for verification of such characteristics as color, texture and finish for each specified rubber track surfacing product.
- C. As necessary, provide shop drawings prepared for project illustrating layouts, details, dimensions and other data.
- D. If specified, provide samples of available line paint colors for selection and approval.

1.3.2 Informational Submittals

- A. Provide current subfloor preparation guidelines, as published by the Manufacturer.
- B. Provide current installation guidelines, as published by the Manufacturer.
- C. If specified, provide current line painting guidelines, as published by the Manufacturer.

1.3.3 Closeout Submittals

- A. Provide current maintenance guidelines, as published by the Manufacturer.
- B. Provide current standard warranty, as published by the Manufacturer.

1.3.4 Maintenance Material Submittals

- A. Provide extra stock materials for use in facility operation and maintenance. Provide amount of approximately 2% of the total floor surface, of each type, color and dye lot.

1.4 QUALITY ASSURANCE

- A. Manufacturer must be certified ISO 9001 and ISO 14001.
- B. Manufacturer must have experience in the manufacturing of prefabricated synthetic rubber track surfacing.
- C. Installer must have performed installations of the same scale in the last three (3) years.
- D. Installer to be recognized and approved by the synthetic rubber track surfacing Manufacturer.
- E. If specified, gamelines must be applied by professionals with proper experience and qualifications to effectively perform the work.

- F. Installation of mock-up is highly recommended and must be deemed acceptable by Owner and Architect. Mock-up is to be installed following the same procedures and utilizing the same specified materials that will be used for the actual project.

-Mock-up size: [XX" x XX" (XX cm x XX cm)].

1.5 DELIVERY, STORAGE AND HANDLING

- A. Materials must be delivered in Manufacturer's original, unopened and undamaged containers with identification labels intact.
- B. Store material upright on a clean, dry, flat surface protected from all possible damage, and protect from exposure to harmful weather conditions.
- C. Recommended environmental condition for storage is a minimum of 55° F (13° C).
- D. Material need not suffer damage during handling (i.e. edge chipping, excessive warping, etc.).



1.6 SITE CONDITIONS

- A. The General Contractor or Construction Manager shall be responsible for ensuring all site conditions meet the requirements of the rubber track surfacing Manufacturer, as referenced herein at sections 3.2 and 3.3.
- B. Maintain a stable room and subfloor temperature for a period of 48 hours prior, during and 48 hours after installation. Recommended range: 65° F to 86° F (18° C to 30° C).
- C. Installation to be carried out no sooner than the specified curing time of concrete subfloor (normal density concrete curing time is approximately 28 days for development of design strength).
- D. Moisture vapor emission content of the concrete slab must not exceed the tolerance of the adhesive used, when tested using the anhydrous calcium chloride test as per ASTM F1869.
- E. Installation of rubber track surfacing will not commence unless all other trades in the building are completed. It is the General Contractor or Construction Manager's responsibility to maintain a secure and clean working area before, during and after the installation of rubber track surfacing.

1.7 WARRANTY

- A. Provide Manufacturer's current standard warranty.
- B. The synthetic track surfacing is warranted to be free from manufacturing defects for a period of three (3) years from the date of shipment from the Manufacturer.

2 PART 2 – PRODUCT

2.1 MANUFACTURED PRODUCTS

2.1.1 Manufacturers

- A. **Mondo America Inc.:**
 - I. North America Headquarters and Manufacturing Plant, 2655 Francis-Hughes, Laval, QC, Canada. Toll Free: USA 1 800 361-3747 or CAN: 1 800 663-8138 Toll Free anywhere in North America: 1 800 441-6645
- B. **Mondo USA:**
 - I. Mondo USA Offices, 1100 East Hector Street, Suite 160, Conshohocken, PA. Toll Free: 1 888 553-0002

2.1.2 Description

- A. MONDOTRACK SX is prefabricated synthetic rubber track surfacing, calendered and vulcanized with a particular closed cell structure, based on special isoprenic rubbers, mineral fillers,



stabilizing agents and pigmentation, highly resistant to UV rays and atmospheric agents, with system of differential elasticity between top surface and base, as manufactured by MONDO AMERICA INC. or approved equal.

- B. Thicknesses: minimum 8mm.
- C. Colors: provided in standard, solid colors.
- D. Finish: track embossing.
- E. Manufactured in two layers which are vulcanized together. The shore hardness of the top layer will be greater than that of the bottom layer; shore hardness of layers to be recommended by the Manufacturer and the limits specified.
- F. Material available in sheets:
 - I. 3' to 5' (0.91m to 1.55m) wide, with an average length of 49' (min.10'/max 52') or 15m (min. 3m/max 16m).
 - II. 5' to 6' (0.91m to 1.83m) wide, with an average length of 39' (min. 10'/max 42') or 12m (min. 3m/max 13m).

2.1.3 Performance

- A. Performance of the prefabricated synthetic rubber track surfacing to conform to the following criteria:

Performance Criteria	Test Method	Result
Critical Radiant Flux	ASTM E648-06	≥ 0.45 W/cm ² (Class 1)
Optical Density of Smoke	ASTM E662-06	< 450
Hardness Shore A	ASTM D2240-05	Top Layer: Shore "A" = 50 (± 5) Bottom Layer: Shore "A" = 35 (± 5)
Force Reduction	IAAF (35-50)	≥ 36%
Modified Vertical Deformation	IAAF (0.6-2.2)	≤ 1.8mm
Tensile Properties : Strength	ASTM D412-06	≥ 100psi
Elongation at break	ASTM D412-06	≥ 120%
Abrasion Resistance Taber (H18 Wheel, 1000 cycles, 1000g load)	ASTM D3389-05	≤ 1.8g (weight loss)
Static Load Limit (250lbs)	ASTM F970-06	≤ 0.010in.
Coefficient of Friction (OSHA > 0.5)	ASTM D2047-04	≥ 0.8
Fungal Resistance Test	ASTM G21-96	No Growth
Chemical Resistance	ASTM F925-02	No Surface Attacks
Spike Resistance	UNI EN 14810	≤ 20 (♦Tr%) ≤ 20 (♦Eb%)

2.1.4 Materials

- A. Provide MONDOTRACK SX prefabricated synthetic rubber track surfacing, as manufactured by MONDO AMERICA INC. or approved equal.
- B. Provide synthetic rubber track surfacing as specified in section 2.1.2 Description.

2.2 ACCESSORY PRODUCTS



- A. Provide adhesive certified by synthetic rubber track surfacing manufacturer: PU 105 polyurethane adhesive. Refer to current guidelines on product mixing and use, as published by the Manufacturer. EP 55 epoxy adhesive may be used in areas that have not been specified for use of Everlay, that will not be subject to impacts, or dynamic loads such as bleachers.
- B. Patching or leveling compound to be supplied and/or recommended/approved by synthetic rubber track surfacing manufacturer.
- C. If specified, line paint products to be supplied and/or recommended/approved by synthetic rubber track surfacing manufacturer.

3 PART 3 – EXECUTION

3.1 INSTALLERS

- A. Refer to section 1.4 of this document for information on installers.

3.2 EXAMINATION

- A. Concrete subfloors to be placed a minimum of twenty-eight (28) days prior to the installation of synthetic rubber track surfacing.
- B. Concrete subfloors on or below grade are installed over a suitable moisture retardant membrane. Water vapor membrane complies with specification in ASTM E1745.
- C. No concrete sealers or curing compounds are applied or mixed with the subfloors (refer to Section 03 05 00 – Common Work Results for Concrete of Division 3).
- D. The underlayment is adequate (if installing over wood subfloors, Mondo only recommends APA (Engineered Wood Association) Exterior grade plywood or CANPLY Exterior Certified plywood (Group 1, CC type).
- E. Moisture and alkalinity tests must be performed. Moisture content must not exceed the capacity of the specified adhesive (verify using the anhydrous calcium chloride test as per ASTM F1869) and pH level should be in the range of 7 to 8.5.
- F. Smooth, dense finish, highly compacted with a tolerance of 1/8" in a 10 ft radius (3.2 mm in 3.05 m radius). Floor Flatness (FF) and Floor Levelness (FL) numbers are not recognized.

3.3 PREPARATION

3.3.1 Subfloors

- A. Prepare concrete subfloor **in accordance with Manufacturer's current printed Subfloor Preparation guidelines.**



3.4 INSTALLATION

3.4.1 Installation of Sheet Goods

- A. Install synthetic rubber track surfacing **in accordance with Manufacturer's current printed Installation Manual.**

3.5 PAINTING (If Specified)

3.5.1 Line Painting

- A. All lines to be painted onto the synthetic rubber track surfacing must be applied **in accordance with Manufacturer's current printed Line Painting Application Instructions.**

3.6 REPAIR

- A. Refer to section 1.3.4 for extra stock materials.
- B. Repair material must be from the same dye lot as material supplied for initial installation.
- C. Repairs are to be performed by qualified installers/technicians only.

3.7 CLEANING

- A. Initial cleaning should only be performed 72 hours after the track surfacing has been completely installed. **NOTE: For surfaces with newly applied line paint, allow 7 days for proper cure.**
- B. Maintain synthetic rubber track surfacing according to current maintenance instructions, as published by Manufacturer.

3.8 PROTECTION

- A. Synthetic rubber track surfacing can be protected with 1/8" Masonite during and after the installation, prior to acceptance by the Owner.