

II-60

GENERAL TERMS AND CONDITIONS AND INSTRUCTIONS TO BIDDERS

TABLE OF CONTENTS

	<u>BIDDING PROCEDURES</u>	<u>PAGE #</u>
1.	Proposal Forms	01
2.	Bid Deposits.....	01
3.	Submission of Bids.....	01
4.	Addendum.....	02
5.	Samples.....	02
6.	No Bid Response	02
7.	Questions	02
8.	Alternate Proposals.....	02
9.	Party Interested in More Than One Bid	02
10.	Bids Binding For 90 Days	02
11.	Withdrawal of Bids.....	02
12.	Bidders Invited to Bid Opening.....	02
	 <u>Awarding the Bid</u>	
13.	Criteria for Awarding Bid/Reservation of Rights	03
14.	Notice of Award	03
15.	Award of All or Part	03
16.	Registration Required	04
17.	Veterans Preference Act	04
	 <u>Bond Requirements</u>	
18.	Execution of Performance Bond	04
19.	Failure to Furnish bond.....	04
	 <u>Specifications</u>	
20.	Formal Specifications	05
21.	Trade Name Used by City	05
22.	Trade Name Used by Bidder	05
23.	Proposed Equivalents	05
	 <u>Price</u>	
24.	Net Prices	05
25.	Tax Exemption	05
26.	Errors in Bid Prices.....	06
	 <u>Quantities</u>	
27.	Specific Bid Quantities	06
28.	Requirements or Estimated Bid Quantities	06

<u>Delivery Provisions</u>	
29.	Placing of Order..... 06
30.	Responsibility for Materials Shipped..... 06
31.	Delivery Failures..... 06
32.	Packaging and Containers 07
33.	Inspection of Goods..... 07
34.	Packing Slips or Delivery Tickets 07
<u>Financial Responsibility Provisions</u>	
35.	General Guaranty..... 07
36.	Warranties..... 07
37.	Insurance..... 08
38.	Indemnification..... 09
39.	CERCLA Indemnification..... 10
<u>Assignment/Termination/Default</u>	
40.	Assignment 10
41.	Termination of Contracts..... 10
42.	Default 10
43.	Material Safety Data Sheets 11
44.	Public Works Projects-Employment of Illinois Labor..... 11
45.	Prevailing Wages 11
46.	Non-Resident Executive and Technical Experts..... 11
47.	Force Majeure 12
<u>Right to Audit Clause</u>	
48.	Retention and Examination of information, Books and Records..... 12

**CITY OF NAPERVILLE
GENERAL TERMS AND CONDITIONS
AND INSTRUCTIONS TO BIDDERS**

THE GENERAL TERMS AND CONDITIONS WHICH FOLLOW APPLY TO ALL PURCHASES AND BECOME A DEFINITE PART OF EACH FORMAL INVITATION TO BID, PURCHASE ORDER, OR CONTRACT ISSUED BY THE CITY OF NAPERVILLE, UNLESS OTHERWISE SPECIFIED. BY SUBMITTING A BID, THE BIDDER AGREES TO BE BOUND BY THESE TERMS AND CONDITIONS. BIDDERS OR THEIR AUTHORIZED REPRESENTATIVES ARE EXPECTED TO FULLY INFORM THEMSELVES OF THE CONDITIONS, REQUIREMENTS, AND SPECIFICATIONS BEFORE SUBMITTING BIDS, FAILURE TO DO SO WILL BE AT THE BIDDER'S OWN RISK AND HE CANNOT SECURE RELIEF ON THE PLEA OF ERROR.

BIDDING PROCEDURES

The first three items must be performed by the bidder in order for the proposal to qualify for consideration by the City. A place to check off each item as you complete it has been provided for your convenience.

- _____ 1. **PROPOSAL FORMS:** Proposals shall be submitted on the forms provided or in an identical format typed by the bidder, properly signed in the appropriate places, and submitted in a sealed envelope.
- _____ 2. **BID DEPOSIT:** When a bid deposit is required as indicated on the Invitation to Bid, each bid must be accompanied by either a bid bond signed by a surety company authorized to do business in Illinois, a cashier's check or a certified check. The bid deposit shall be in an amount equal as indicated in the Invitation to Bid. This amount will not exceed 5% of the total bid price. When bids are awarded, the Purchasing Manager will return all checks except those of the successful bidder(s). The check(s) of the successful bidder will be returned upon the submission within ten (10) days of a properly executed performance bond. If no performance bond is required, the certified check will be returned.
- _____ 3. **SUBMISSION OF BIDS:** All bids submitted must be received in an envelope by the Purchasing Division before the time specified for opening the bid. The envelope must be clearly marked "SEALED BID" --WITH THE MATERIAL OR SERVICE DESCRIPTION, BID CALL NUMBER, DATE AND TIME OF OPENING, written on the front of the envelope.

The Purchasing Manager, or his designated agent, will decide when the specified time for the bid opening has arrived (as determined by the official clock on the wall in the Purchasing Division), and bids will be opened precisely at the assigned time. Formal sealed bids, amendments thereto, or requests for withdrawal of bids after the time specified for the bid opening will not be considered.

4. **ADDENDUM:** Bidders shall acknowledge the receipt of any addendum interpreting the specifications on the proposal form.
5. **SAMPLES:** Samples or drawings requested shall be delivered free of charge with the bid. Rejected samples shall be -removed by the bidder at his own expense after the bid opening. Accepted samples will be retained during the life of the contract.
6. **NO BID RESPONSE:** In the event you cannot submit a bid, please return the Proposal with an explanation as to why you are unable to bid and mark it "NO BID."
7. **QUESTIONS:** All questions concerning the bid shall be submitted to the Purchasing Division. Questions requiring a clarification or interpretation of the specifications shall be submitted to the Purchasing Division in writing at least five working days prior to the bid opening so that the Purchasing Division can issue a written response to all bidders in the form of an addendum. Whenever the answer to a question is contained in the bid documents, the bidder shall be directed to the provision in the specifications which responds to the question. The City of Naperville, Illinois will not be responsible for any other explanation of the specifications made prior to the receipt of bids.
8. **ALTERNATE PROPOSALS:** Unless the proposal form states that an alternate proposal is permissible, each vendor may submit only **ONE** proposal. If an unsolicited alternate is included in the bid, only the first proposal seen by the City will be read and considered.
9. **PARTY INTERESTED IN MORE THAN ONE BID:** A party who has quoted prices for work, materials, or supplies to a bidder is not thereby disqualified from quoting prices to other bidders or from submitting a bid directly for the work, materials, or supplies.
10. **BIDS BINDING FOR 90 DAYS:** Unless otherwise specified in the specifications, all formal bids submitted shall be binding for ninety (90) calendar days following date of opening.
11. **WITHDRAWAL OF BIDS:** A written request for the withdrawal of a bid will be granted if the request is received by the City prior to the specified time of opening.
12. **BIDDERS INVITED TO BID OPENING:** At the time assigned for the opening of formal bids, the bids will be opened and read aloud. Bidders are encouraged to attend all openings and to offer constructive suggestions for improvements to bid format or any way in which greater savings can be realized.

AWARDING THE BID

13. **CRITERIA FOR AWARDING BID/RESERVATION OF RIGHTS:** The contract will be awarded to the lowest responsible bidder, or any other bidder determined by the

City Council to be in the best interest of the City, who complies with all the provisions of the invitation to bid. The City reserves the right to reject any or all bids or to waive any non-conformity in bids received whenever such rejection or waiver is in the best interests of the City. The City also reserves the right to reject the bid of a bidder who has previously failed to satisfactorily perform a contract, has not completed contracts on time, or who investigation shows is not in a position to perform the contract.

In determining responsibility, the following qualifications will be considered by the City:

- (a) The ability, capacity, and skill of the bidder to perform the contract or provide the service required;
- (b) Whether the bidder can perform the contract or provide service promptly, or within the time specified, without delay or interference;
- (c) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- (d) The quality of performance of previous contracts or services;
- (e) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;
- (f) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
- (g) The quality, availability, and adaptability of the supplies or contractual services to the particular use required;
- (h) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
- (i) Bidder's record of experience in construction improvements of the size and type required in the bid specifications;
- (j) Lowest bids received including discounts for cash payments.

14. **NOTICE OF AWARD:** The City will accept in writing one of the proposals, within ninety (90) days from the date of opening of bids, or the time specified within the specifications, unless the lowest responsible bidder extends the time of acceptance to the City. Notice of Award will be mailed to all bidders within the time for acceptance specified in the Invitation to Bid.
15. **AWARD OF ALL OR PART:** Unless otherwise specified by the City, the City reserves the right to make an award on all items, or on any of the items according to the best interests of the City. Bidder may restrict his bid to consideration in the aggregate by so stating, but must name a unit price on each item bid upon. The City reserves the right to accept or reject any bid in which the bidder names a total price for all the articles without quoting a price on each and every item.
16. **REGISTRATION REQUIRED:** Companies awarded bids should be registered to do business in the State of Illinois. The Purchasing Division may verify status with the State by calling 217-782-7880 prior to awarding contract.

17. **VETERANS PREFERENCE ACT:** In the event of a tie, the City will give preference according to the Veterans Preference Act; Illinois Revised Statutes, Chapter 126-1/2, Section 23, Effective July 1, 1935 as amended September 6, 1990; In the employment and appointment to fill positions in the construction, addition to, or alteration of all public works undertaken or contracted for by the State, or by any political subdivision there, preference shall be given to persons who have been members of the armed forces of the United States or who, while citizens of the United States, were members of the armed forces of allies of the United States in time of hostilities with a foreign country, and have served under one or more of the following conditions:
- (1) The veteran served a total of at least six months, or
 - (2) The veteran served for the duration of hostilities regardless of the length of engagement, or
 - (3) The veteran served in the theater of operations but was discharged on the basis of hardship, or
 - (4) The veteran was released from active duty because of a service connected disability and was honorably discharged. But such preference shall be given only to those persons who are found to possess the business capacity necessary for the proper discharge of the duties of such employment. No political subdivision or person contracting for such public works is required to give preference to veterans, not residents of such districts, over residents thereof, who are not veterans.

BOND REQUIREMENTS

18. **EXECUTION OF A PERFORMANCE BOND AND LABOR AND MATERIALS BOND:** When noted in the specifications, the City reserves the right to require the successful bidder to supply a Performance Bond and a Labor and Materials Bond within ten (10) calendar days of acceptance of the bidder's proposal by the City. The bonds, unless otherwise specified by the Purchasing Manager, shall be 100% of the total contract price.
19. **FAILURE TO FURNISH BOND:** In the event that the bidder fails to furnish the above mentioned bonds within ten (10) calendar days after acceptance of bid by the City, then the bid deposit of the bidder shall be retained by the City as liquidated damages, it being now agreed that said sum is a fair estimate of the amount of damages that said City will sustain due to the bidder's failure to furnish said bonds.

SPECIFICATIONS

20. **FORMAL SPECIFICATIONS:** When a formal, numbered specification is referred to in this invitation, no deviation from that specification will be permitted.

21. **TRADE NAME USED BY CITY:** Any reference in the City's specifications to a manufacturer's catalog number is descriptive, not restrictive, indicating articles that are satisfactory. Bids on other makes and catalogs will be considered, provided the bidder clearly states on the face of his proposal exactly what he proposes to furnish; or forwards with his bid, a cut, illustration, or other descriptive matter which will clearly indicate the character of the article covered by his bid.
22. **TRADE NAME USED BY BIDDER:** Where the bidder identifies an item by manufacturer's name, trade name, catalog number, or reference, the bidder shall furnish the item so identified and shall not propose to furnish an "equal" unless the proposed "equal" is definitely indicated within the bid.
23. **PROPOSED EQUIVALENTS:** The Purchasing Manager hereby reserves the right to approve as an equal, or to reject as not being equal, any article the bidder proposed to furnish which contains major or minor variations from specifications requirements but which may comply substantially therewith.

If no particular brand, model, or make is specified, and if no data are required to be submitted with the bid, the specifications may require the bidder to submit working drawings or detailed descriptive data sufficient for the City to determine if each requirement of the specifications is being complied with prior to manufacture or shipment.

PRICE

24. **NET PRICES:** Bid prices, unless otherwise specified in the specifications, must be net, including transportation and handling charges fully prepaid by the contractor to delivery point. All prices are subject to a cash discount of 2% 10 Days/Net 30 on commodities, rentals and services unless otherwise specified. Term #24 does not include construction contracts.
- Prices must be a firm monetary figure for the cost of the commodity, service, or project. In the event the City invites bids for the purchase of any item or real property, the City shall not accept a bid which is based upon any other bid, contract, or reference to any other document or numbers not included in the bidder's bid documents.
25. **TAX EXEMPTION:** Sales to the City of Naperville are exempt from state and local retailers' occupation tax, state and local service occupational tax, use tax, and service use tax pursuant to Rule No. 40 of the Illinois Retailers Occupation Tax Rules issued April 15, 1965. Our tax exemption number is E9997-4398-02.
26. **ERRORS IN BID PRICES:** When an error is made in extending total prices, the unit bid price will govern.

QUANTITIES

27. **SPECIFIC BID QUANTITIES:** Where quantities are specifically stated, acceptance will bind the City to order and pay for, at contract prices, all such supplies or services delivered that meet the specifications and conditions of the contract.
28. **REQUIREMENTS OR ESTIMATED BID QUANTITIES:** On "Requirements or Estimated Bid Quantities," acceptance will bind the City to pay for, at unit bid prices, only quantities ordered and delivered. Any reference to forecasted or estimated quantities within the bidding documents is intended to inform the bidder of approximate annual requirements. The City may purchase as little as zero percent (0%) or exceed as much as one hundred percent (100%) of the forecasted or estimated quantities.

DELIVERY PROVISIONS

29. **PLACING OF ORDER:** Orders against contracts will be placed with the Contractor on a Purchase Order executed and released by the Purchasing Manager. Telephonic orders placed directly with the Contractor by the ordering department may be authorized by the Purchasing Manager only after execution of an Open End or Blanket Purchase Order.
30. **RESPONSIBILITY FOR MATERIALS SHIPPED:** The successful bidder shall be responsible for the materials or supplies covered by this contract until they are delivered at the designated point. Rejected materials or supplies must be removed by and at the expense of the contractor promptly after notification or rejection.
31. **DELIVERY FAILURES:** Failures of a Contractor to deliver within the time specified, or within a reasonable time as interpreted by the Purchasing Manager, or failure to make replacement of rejected articles when so requested, immediately or as directed by the Purchasing Manager, shall constitute authority for the Purchasing Manager to purchase in the open market articles of comparable grade to replace the articles rejected or not delivered. On all such purchases, either: (1) the Contractor shall reimburse the City, within a reasonable time specified by the Purchasing Manager, for any expense incurred in excess of contract prices; or (2) the City may deduct such amount from monies owed the defaulting Contractor. Such purchases shall be deducted from contract quantities. Should public necessity demand it, the City reserves the right to use or consume articles delivered which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Manager.
32. **PACKAGING AND CONTAINERS:** Unless otherwise specified, goods shall be delivered in commercial packages in standard commercial containers, so constructed as to insure acceptance by common or other carrier for safe transportation, at the lowest rate, to the point of delivery. Containers become the property of the City unless otherwise specified by bidder in his bid.

33. **INSPECTION OF GOODS:** Inspections and acceptance of materials or supplies will be made after delivery. Final inspection shall be conclusive except as regards latent defects, fraud, or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable. All delivered materials shall be accepted subject to inspection and physical count.

34. **PACKING SLIPS OR DELIVERY TICKETS:** All shipments or deliveries shall be accompanied by packing slips or delivery tickets and shall contain the following information for each item delivered:

Purchase Order Number	Quantity Ordered
Name of the Article and Stock Number	Quantity Shipped
Name of the Contractor	Quantity Back Ordered

FINANCIAL RESPONSIBILITY PROVISIONS

35. **GENERAL GUARANTY:** Contractor agrees to:

- (a) Save the City, its agents, and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article, or appliance furnished or used in the performance of the contract which the Contractor is not the patentee, assignee, licensee, or owner; and
- (b) Protect the City against latent defects in materials or workmanship and to repair or replace any articles damaged or marred in transit or during delivery; and
- (c) Pay for all permits, licenses, and fees and give all notices and to comply with all laws, ordinances, and rules of the City and the State of Illinois.

36. **WARRANTIES:** Unless otherwise specified, the Contractor shall unconditionally guarantee the materials and workmanship on all equipment furnished by him FOR A PERIOD OF ONE YEAR from date of delivery and installation if required unless otherwise specified in the specifications. If within the guarantee period, any defects or signs of deterioration are noted which, in the opinion of the City, are due to faulty design and installation, workmanship, or materials, the City shall notify the Contractor. At the Contractor's expense, the Contractor shall repair or adjust the equipment or parts to correct the condition, or replace the part or entire unit to the complete satisfaction of the City.

37. **INSURANCE:** At the Contractor's expense, the Contractor shall secure and maintain in effect throughout the duration of this contract, insurance of the following kinds and limits to cover all locations of the Contractor's operations. The Contractor must furnish Certificates of Insurance to the City before staff recommends award of the contract to City Council. All insurance policies shall be written with insurance companies licensed to do business in the State of Illinois and having a rating of not less than A IX, according to the latest edition of the A.M. Best Company; and shall include a provision

preventing cancellation of the insurance policy unless thirty (30) days prior written notice is given to the City. This provision shall also be stated on each Certificate of Insurance as "Should any of the above described policies be canceled before the expiration date, the issuing company will mail 30 days written notice to the certificate holder named to the left".

If requested, the awardee of this bid will give the City a copy of the insurance policies. The policies must be delivered to the City within two weeks of the request.

The limits of liability for the insurance required shall provide coverage for not less than the following amounts, or greater where required by law.

(A) Commercial General Liability:

- i. Coverage to include Premise/Operations, Products/Completed Operations, Independent Contractors, Broad Form Property Damage, Contractual and Personal Injury.
- ii. Limits:

General Aggregate	\$ 2,000,000.00
Products/Completed	\$ 1,000,000.00
Each Occurrence	\$ 1,000,000.00
Personal Injury	\$ 1,000,000.00
- iii. Exclusions relating to the Explosion, Collapse and Underground hazards shall be deleted.
- iv. Coverage is to be written on an "occurrence" basis.
- v. Products/Completed Operations coverage is to remain in force for a period of two (2) years after the completion of the project.
- vi. Cover all claims arising out of the Contractor's operations or premises, Subcontractor's operations or premises, anyone directly or indirectly employed by the Contractor or Subcontractor, and the Contractor's obligations of indemnification under this Contract.

(B) Owners & Contractors Protection: (Only for new construction and additions to City buildings)

- i. Bodily Injury

Annual	\$ 1,000,000.00
Each Occurrence	\$ 1,000,000.00
- ii. Property Damage:

Annual	\$ 500,000.00
Each Occurrence	\$ 500,000.00

(C) Workers Compensation:

- i. Shall be in accordance with the provisions of the laws of the State of Illinois, including Occupational Disease Act provisions, for all employees at the site of the project, and in case work is sublet, the Contractor shall require each Subcontractor similarly to provide this

insurance. In case employees are engaged in work under this contract and are not protected under the Workers Compensation and Occupational Disease Act, the contractor shall provide, and shall cause each subcontractor to provide, adequate and suitable insurance for the protection of employees not otherwise provided.

(D) **Comprehensive Automobile Liability:**

- i. Coverage to include all Owned, Hired, Non-owned vehicles, and/or trailers and other equipment required to be licensed.
- ii. Limits:
Combined Single Limit \$ 1,000,000.00

(E) **Umbrella:**

- i. Limits:
Aggregate \$ 2,000,000.00
- ii. Cover all claims arising out of the Contractor's operations or premises, Subcontractor's operations or premises, anyone directly or indirectly employed by the Contractor or Subcontractor, and the Contractor's obligations under indemnifications under this Contract.

(F) **The City of Naperville shall be named as additional insured on all insurance policies, except for workers compensation.**

The Contractor understands and agrees that any performance bond or insurance protection required by this contract or otherwise provided by Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the City as herein provided.

38. **INDEMNIFICATION:** The Contractor shall indemnify, hold harmless and defend the City, its commissioners, officers, employees, and its agents from any and all claims, suits, actions, costs, and fees, including reasonable attorney's fees, of every nature or description arising from, growing out of, or connected with any negligent act, error or omission, neglect, or misconduct of the Contractor, its employees and agents, or its subcontractor(s) in the performance of this Contract. Such indemnification shall not be limited by reason of the enumeration of any insurance coverage herein provided.

Nothing contained herein shall be construed as prohibiting the City, its commissioners, officers, agents, or its employees, from defending through the selection and use of their own agents, attorneys, and experts, any claims, actions, or suits brought against them. The Contractor shall be liable for the costs, fees, and expense incurred in the defense of any such claims, actions, or suits.

39. **CERCLA INDEMNIFICATION:** The Contractor shall, to the maximum extent permitted by law, indemnify, defend, and hold harmless the City, its officers, employees, agents, and attorneys from and against any and all liability, including

without limitation, costs of response, removal, remediation, investigation, property damage, personal injury, damage to natural resources, health assessments, health settlements, attorneys' fees, and other related transaction costs arising under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, 42 U.S.C.A. Sec. 9601, et seq., as amended, and all other applicable statutes, regulations, ordinances, and under common law for any release or threatened release of the waste material collected by the Contractor, both before and after its disposal.

ASSIGNMENT/TERMINATION/DEFAULT

40. **ASSIGNMENT:** Assignment of this contract or any part thereof, or any funds to be received there under by the Contractor shall be subject to the approval of the City of Naperville.
41. **TERMINATION OF CONTRACTS:** Contracts will remain in force for full periods and until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and thereafter until all requirements and conditions shall have been met, unless:
- (a) Terminated prior to expiration date by satisfactory deliveries of entire contract requirements.
 - (b) Extended upon written authorization of the Purchasing Manager and accepted by Contractor, to permit ordering of unordered balances or additional quantities at contract prices and in accordance with contract terms.
42. **DEFAULT:** The contract may be canceled or annulled by the City Council in whole or in part by written notice of default to the Contractor upon non-performance or violation of contract terms. Upon receipt of such notice, the Contractor shall have fourteen (14) days within which to cure any default or violation. If the default or violation is not cured within the specified time an award may be made to the next lowest Bidder, or articles specified may be purchased on the open market. In either event, the defaulting Contractor (or his surety) shall be liable to the City for costs incurred by the City in excess of the defaulted contract prices. However, the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.
43. **MATERIAL SAFETY DATA SHEETS:** It is a federal law that chemical manufacturers and importers must develop an MSDS for each hazardous chemical they produce or import, and must provide the MSDS automatically at the time of the initial shipment of a hazardous chemical to a downstream distributor or user, or anytime the chemical makeup of the product is changed. Distributors must also ensure that downstream employers are similarly provided an MSDS.

Vendors who are awarded this contract, and if the above paragraph applies to this bid, must submit Material Data Sheets which include information regarding the specific chemical identity of the hazardous chemical(s) involved and the common names. In

addition, information must be provided on the physical and chemical characteristics of the hazardous chemical; known acute and chronic health effects and related health information; exposure limits; whether the chemical is considered to be a carcinogen by NTP, IARC, or OSHA; precautionary measures; emergency and first-aid procedures; and the identification of the organization responsible for preparing the sheet.

44. **PUBLIC WORKS PROJECTS-EMPLOYMENT OF ILLINOIS LABORERS:** Whenever there is a period of excessive unemployment in Illinois, every person who is charged with the duty, either by law or contract, of constructing or building any public works project or improvement or for the cleanup and on-site disposal of hazardous waste for the State of Illinois or any political subdivision, municipal corporation or other governmental unit thereof shall employ only Illinois laborers on such project or improvement, and every contract let by any such person shall contain a provision requiring that such labor be used: Provided, that other laborers may be used when Illinois laborers as defined in this Act are not available, or are incapable of performing the particular type of work involved, if so certified by the contractor and approved by the contracting officer.
45. **PREVAILING WAGES:** Contractor shall comply with all applicable provisions of "An Act regulating wages of laborers, mechanics, and other workers employed in any public works by the State, county, city or any public body or any political subdivision or by any one under contract for public works," approved June 26, 1941, 820 ILCS 130/0.01 et seq. (2002) (see website address: <http://www.state.il.us/agency/idol/> for rates) and City of Naperville Ordinance 03-140, ("An Ordinance Ascertaining Prevailing Wages In the City of Naperville"), as amended by Ordinance 04-011, and any applicable superceding ordinance or public law.
46. **NON-RESIDENT EXECUTIVE AND TECHNICAL EXPERTS:** Every contractor on a public works project or improvement or hazardous waste clean-up and on-site disposal project in this State may place on such work no more than 3, or 6 in the case of a hazardous waste clean-up and on-site disposal project, of his regularly employed non-resident executive and technical experts, even though they do not qualify as Illinois laborers as defined in Section 1 of Article 2 of this Act.
47. **FORCE MAJEURE:** Whenever a period of time is provided for in this Agreement for either the CITY or Contractor to do or perform any act or obligation, neither party shall be liable for any delays or inability to perform due to causes beyond the control of said party such as war, riot, strike or lockout by or against either party's own employees or suppliers, unavoidable casualty or damage to personnel, materials or equipment, fire, flood, storm, earthquake, tornado or any act of God; provided, however, that said time period shall be extended for only the actual amount of time said party is so delayed. Except as to a strike or lockout by or against either party's own employees or suppliers, an act or omission shall not be deemed to be "beyond Contractor's control" if committed, omitted or caused by Contractor, Contractor's employees, officers or agents

or a subsidiary, affiliate or parent of Contractor or by any corporation or other business entity that holds a controlling interest in Contractor, whether held directly or indirectly.

Right to Audit Clause

48. **RETENTION AND EXAMINATION OF INFORMATION, BOOKS AND RECORDS:** The Contractor shall cooperate with the City and provide the City, when requested, with access to data, information and documentation pertaining to the work. City requests for information may be based on requests from federal or state regulatory agencies, other governmental agencies, courts of law, consultants hired by the City or other parties, which in the City's opinion, require the information.

Data, information and documentation will include, but not be limited to, original estimate files, change order estimate files and detailed worksheets; subcontract and supplier proposals for both successful and unsuccessful bidders; all project related correspondence; subcontractor and supplier change order files (including detailed documentation covering negotiated settlements); back-charge logs and supporting documentation; any records detailing cash, trade, or volume discounts earned; insurance proceeds, rebates, or dividends received; and any other supporting evidence necessary to substantiate charges related to the contract (both direct and indirect costs, including overhead allocations as they may apply to costs associated with the contract).

The Contractor will provide the City with copies of all requested records in a computer-readable format (if available) as well as hard copy.

The Contractor shall retain and preserve all information relating to the work for a period of at least four (4) years from the date of the completion of the work.

The City will have the right to audit any records necessary to permit evaluation and verification of contractor compliance with contract requirements throughout the term of the contract and for a period of four years after final payment, or longer if required by law.

The City will have the right to interview any of the contractor's current and former employees, as related to this contract, during the audit.

The Contractor will provide the City with adequate and appropriate work space, with access to photocopy machines, during the audit.

The Contractor will include in its subcontracts a provision granting the City the right of audit provisions against subcontractors as contained in this article