GENERAL CONTRACT

## **BETWEEN CITY OF REDWOOD FALLS AND CONTRACTOR**

This Agreement made the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 2016, by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereinafter called “the Contractor”, and the City of Redwood Falls, a Minnesota Municipal Corporation, hereinafter called “the City”.

WITNESSETH, that the Contractor and the City for the consideration hereinafter named agree as follows:

ARTICLE 1. SCOPE OF WORK

The Contractor shall furnish all of the materials and perform all of the work shown on the drawings and described in the specifications for the project entitled 2016 Ramsey Park Walking Path Renovation Project.

Drawings and specifications for this project were prepared by the City of Redwood Falls. The Contractor shall do everything required by this Agreement, the General and Supplemental Conditions of the Contract, the Special Conditions, the Addenda, the Specifications, the Drawings, and the Proposal attached as **Exhibit 1** (including any unit prices stated therein).

The Specifications and Drawings are enumerated as follows:

SPECIFICATIONS: See attached as **Exhibit 2**.

DRAWINGS: See attached as **Exhibit 2**.

ADDENDA: See attached as **Exhibit 2**.

ARTICLE 2. TIME OF COMPLETION

The City shall provide a Notice to Proceed in which a date for commencement of the work shall be stated; such commencement date shall be 10 or more days after the date of the notice. The Contractor shall achieve substantial completion of the work by November 1st, 2017 (\_\_\_\_) calendar days after such commencement date, as such completion date may be extended by approved Change Orders.

“Substantial completion” is the stage in progress of the work when the work or designated portion thereof is sufficiently complete or operational so that the City could utilize the work for its intended use. The failure of any other contractor to complete the work required of that contractor shall not operate to relieve Contractor of its responsibility to substantially complete Contractor’s work unless some part of Contractor’s work depends upon work or operations by a separate contractor. In such an event, Contractor shall immediately report to the City Representative the particular failure of the other contractor that hinders or delays Contractor’s ability to complete the Work.

Final completion must be achieved by June 30, 2018.

**Time limits stated herein are of the essence**. By executing this Contract, the Contractor confirms that the Time of Completion herein stated is a reasonable time period for performing the work.

ARTICLE 3. THE CONTRACT SUM

The City shall pay the Contractor for performance of the Contract, subject to additions and deductions provided therein, the sum of \_\_\_\_\_\_\_\_\_\_\_\_ ($\_\_\_\_\_\_\_\_\_\_), and make payment after completion of services upon the presentation of a claim in the manner provided by law.

The City shall retain a minimum of five percent of the total amount of the Contract until the City can ensure the Contractor has met the terms of the Contract.

If payment under this agreement is dependent upon the availability of federal, state, county or other funds and such funds are reduced or terminated, the Contract may be renegotiated or terminated at the sole discretion of the Owner.

In the event of termination, Contractor shall be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

Before final payment is made, the City shall ensure Contractor has complied with all requirements contained in Minn. Stat. §290.92 regarding the withholding of taxes and wages. Contractor shall submit documentation of compliance with its claim for final payment. A certificate by the Minnesota State Commissioner of Revenue will satisfy this requirement (Form IC-134). Contractor is not entitled to final payment until such documentation is submitted.

ARTICLE 4. LIQUIDATED DAMAGES

For each consecutive calendar day after the substantial completion period set forth in Article 2 above that any work, including the correction of deficiencies found during the final testing and inspection, is not completed, the amount of five hundred dollars ($500.00) per calendar day will be deducted from the money due or becomes due to the Contractor, not as a penalty but as liquidated damages. The five hundred dollars ($500.00) per calendar day represents the parties' estimate at the time of contract execution of the damages which the Owner will sustain for late completion.

ARTICLE 5. CITY’S REPRESENTATIVE

The City's Representative shall mean Jim Doering, Public Works Project Coordinator, and such other individual(s) or entities as the City shall from time-to-time designate. The City's Representative shall provide administration of the Project. The City's Representative shall have authority to reject work that does not conform to the Contract Documents. The City and Contractor shall endeavor to communicate with each other through the City's Representative about matters arising out of or relating to the Contract.

ARTICLE 6. CORRECTION OF WORK

The Contractor shall promptly correct any Work rejected by the City Representative or which fails to conform to the requirements of this Contract, whether discovered before or after Substantial Completion. Costs of correcting such rejected Work shall be solely at the Contractor’s expense. In addition, if, within one year after the date of Substantial Completion of the Work or designed portion thereof, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the City to do so unless the City has previously given the Contractor a written acceptance of such condition.

ARTICLE 7: BONDS

As required and contemporaneous with the execution of this Contract, Contractor agrees to provide a payment and performance bond for the City pursuant to Minnesota law.

ARTICLE 8. INDEMNIFICATION AND INSURANCE

Each party shall be liable for its own acts to the extent provided by law and hereby agrees to indemnify, hold harmless and defend the other, its officers and employees against any and all liability, loss, costs, damages, expenses, claims or actions, including attorney’s fees which the other, its officers and employees may hereafter sustain, incur or be required to pay, arising out of or by reason of any act or omission of the party, its agents, servants or employees, in the execution or performance or failure to adequately perform its obligations pursuant to this Agreement.

It is understood and agreed that the City’s liability shall be limited by the provisions of Minn. Stat. Chap. 466 and/or other applicable law.

Contractor shall defend and indemnify the City against claims brought or actions filed against the City or any of its officers, employees or agents for property damage, bodily injury or death to third persons, arising out of or relating to Contractors work under this Contract. The Contractor shall be solely responsible for the health and safety of its employees and subcontractor’s employees in connection with the services provided in accordance with this Contract.

Contractor further agrees that in order to protect itself as well as the City under the indemnity provision set forth above, it will at all times during the term of this Agreement keep in force:

A. Commercial General Liability Insurance Policy with minimum limits of $1,500,000 combined single limit (CSL), with coverage pertaining to premises operations. In the event Combined Single Limits Coverage is not secured by the contractor, the following minimum limits apply:

$2,000,000 Aggregate

$2,000,000 Products and Completed Operations Aggregate

$1,000,000 Personal Injury and Advertising Injury

$1,000,000 Each Occurrence

$ 100,000 Fire Damage Limit

$ 5,000 Medical Expense

The policy should be written on an “occurrence” basis and not a “claims-made” basis.

B. Automobile Liability Insurance including owned, non-owned, and hired vehicles in an amount not less than $1,000,000 combined single limit (CSL) for total bodily injuries and/or damages arising from any one accident. If automobiles are not used, City must receive a letter from Contractor stating this.

C. Professional Liability Insurance (when required) in the minimum amount of $1,500,000 combined single limit (CSL). In the event Combined Single Limits Coverage is not secured by the Contractor, the following minimum limits apply:

$2,000,000 Aggregate

$1,000,000 per Wrongful Act or Occurrence

D. Excess Umbrella Liability Policy in the amount of $1,000,000 will be additionally required if any of the above policies have lower limits than stated.

E. Worker’s Compensation Insurance.

F. Prior to the effective date of this Agreement, and as a condition precedent, the Contractor will furnish the City with an original Certificate of Insurance listing the City as an "Additional Insured" in all coverage areas except Worker’s Compensation.

ARTICLE 9: CLEAN SITE

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by Contractor’s performance of Contractor’s obligations under this Contract. At completion of Contractor’s obligations, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor’s tools, construction equipment, machinery and surplus materials. If the Contractor fails to clean up as provided in this Contract, the City may do so and the cost thereof shall be charged to the Contractor.

ARTICLE 10. DEFAULT AND CANCELLATION

If the Contractor fails to perform any of the provisions of this Agreement or so fails to administer the work as to endanger the performance of the Contract, this shall constitute default.

Unless the Contractor’s default is excused by the City, the City may, upon written notice to the Contractor’s representative listed herein, cancel this Agreement in its entirety as indicated in below.

This Agreement may be cancelled with or without cause by either party upon thirty (30) days written notice.

The Contractor’s representative is: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

The Contractor’s address is: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

ARTICLE 11. ENTIRE AGREEMENT AND MODIFICATIONS

This Contract supersedes all prior agreements, written or oral, between Contractor and City and shall constitute the entire agreement and understanding between the parties with respect to the project herein described. This Contract and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Contractor and City. All items referred to in this Contract are presumed to be incorporated or attached and are deemed to be part of this Contract.

ARTICLE 12: ASSIGNMENT

Contractor shall not enter into any subcontract for the performance of any services contemplated under this Contract nor assign any interest without the prior written approval from the City and subject to such conditions and provisions as the City may deem necessary. The Contractor shall be responsible for the performance of all subcontractors.

ARTICLE 13: MISCELLANOUS PROVISIONS

Captions. The captions of paragraphs in this Contract are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

Governing Law and Venue. The laws of the State of Minnesota shall govern and apply to this Contract. The county where the project described herein is located shall be the sole place of venue for any legal action arising from or related to this Contract or the project in which the City is a party.

Waivers. No delay or omission by either party in exercising any right or power arising from non-compliance or failure of performance by the other party with any of the provisions of this Contract shall impair or constitute a waiver of any such right or power. A waiver by either party of any covenant or condition of this Contract shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of the Contract.

Binding Effect. This Contract shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.

Records. Records of Contractor’s costs, reimbursable expenses pertaining to the project and payments shall be available to City or its authorized representative during business hours and shall be retained for six (6) years after final payment or abandonment of the project, unless the City otherwise instructs Contractor in writing.

Notices. All notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of the Contractor or City for whom it is intended; or sent by U. S. Mail to the last known business address of the designated representative; or transmitted by fax machine to the last know business fax number of the designated representative. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing.

Independent Contractor Status. The parties recognize that the relationship between the City and Contractor shall be that of an independent contractor and nothing herein contained shall be construed to create the relationship of employer and employee between the City and Contractor. Contractor represents that is has, or will secure at its own expense, all personnel required in performing the services under this Contract. Any and all persons, while engaged in the performance of any work or service contemplated by this Contract, shall have no contractual relationship with the City and shall not be considered employees of the City, and any and all claims that may or might arise under the Unemployment Compensation Act or the Workers’ Compensation Act of the State of Minnesota on behalf of said personnel arising out of employment or alleged employment including, without limitation, claims of discrimination against the Contractor, its officers, agents, contractors, or employees shall in no way be the responsibility of the City; and Contractor shall defend, indemnify and hold the City, its officers, agents and employees harmless from any and all such claims irrespective of any determination of any pertinent tribunal, agency, board, commission or court. Such personnel or other person shall neither require nor be entitled to any compensation, rights or benefits of any kind whatsoever from the City, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers’ Compensation, Unemployment Insurance, disability, severance pay and PERA.

Severability. Should any term or provision of this Contract be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Contract shall be construed as if the invalid or unenforceable term or provision had never been included. The parties agree to substitute for the invalid or unenforceable provision a valid provision that most closely approximates the intent of the invalid provision.

[Remainder of page intentionally left blank.]

Contractor, having signed this Contract, and the Redwood Falls City Council, having duly approved such on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2016, the parties hereto agree to be bound by the provisions herein and attached.

Executed this the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 2016 for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a Minnesota corporation:

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Executed this the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2016, for the City of Redwood Falls:

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Its Mayor

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Its City Administrator