



**SPECIAL PROVISIONS
FOR
COPYRIGHT AND WARRANTY**

**Polk County
EDP-PA26(001)--7Y-77**

**Effective Date
November 1, 2022**

THE STANDARD SPECIFICATIONS, SERIES 2015, ARE AMENDED BY THE FOLLOWING MODIFICATIONS AND ADDITIONS. THESE ARE SPECIAL PROVISIONS AND THEY SHALL PREVAIL OVER THOSE PUBLISHED IN THE STANDARD SPECIFICATIONS.

151160.01 DESCRIPTION.

The City of Des Moines, Iowa (CITY) will own the landside improvements after acceptance of the project. As such, the intent of this special provision is to require the Contractor to provide the CITY with an unlimited, non-exclusive copyright, license to project documentation and to provide a warranty as noted below.

151160.02 REQUIREMENTS.

- A.** The Contractor shall provide the CITY with copies of all final construction plans and documentation, including shop drawings and shall provide the CITY with an unlimited, non-exclusive, copyright license to all final construction plans and documentation, including shop drawings in conformance with the agreement provided in Attachment A of this special provision.
- B.** The Contractor shall provide the CITY with a warranty that the construction of the project is in accordance with generally recognized engineering or safety standards or design theories in existence at the time of the construction of the project and to indemnify the CITY in conformation with the indemnification requirements specified in Attachment A of this special provision.
- C.** The Contractor shall fully execute Attachment A prior to final acceptance of the project by the Contracting Authority.

151160.03 METHOD OF MEASUREMENT AND BASIS OF PAYMENT.

Complying with the provisions noted in Article 151160.02 shall not be measured separately for payment. The cost of complying with these provisions and executing Attachment A shall be considered incidental to Mobilization.

ATTACHMENT A

**CONTRACTOR
UNLIMITED, NON-EXCLUSIVE LICENSE OF COPYRIGHT RIGHTS TO CONSTRUCTION
DOCUMENTS FOR SCOTT AVENUE DAM, PROSPECT PARK, BIRDLAND MARINA AND HARRIET
STREET IMPROVEMENTS
AND
WARRANTY AND INDEMNIFICATION FOR SAME**

WHEREAS, Des Moines Metropolitan Planning Organization, a unit of local government pursuant to Iowa Code Chapter 28E ("MPO") and _____ (CONTRACTOR), an _____ (State) corporation located at _____ ("CONTRACTOR"), have entered into an Agreement for construction of on land and in-water improvements for Scott Avenue Dam, Prospect Park, Birdland Marina, and the Harriet Street Corridor as part of the implementation of a USDOT Better Utilizing Investments to Leverage Development Transportation Discretionary Grants Program grant ("BUILD Grant") awarded to the Des Moines Area Metropolitan Planning Organization ("MPO") for the first phase of a multi-phased project that will mitigate a low-head dam at Scott Avenue and enhance access points at Prospect Park, Birdland Marina and Harriet Street along the Des Moines River within the City of Des Moines to facilitate water recreational trail (hereinafter "PROJECT") with an effective date of/dated _____, 2021 ("the Construction Agreement"); and

WHEREAS, pursuant to the BUILD Grant Agreement and the Sub-Agreement between the MPO and the Iowa Department of Transportation, the MPO is the contracting authority and remains in responsible charge for the PROJECT construction; and

WHEREAS, pursuant to the Construction Agreement, CONTRACTOR has prepared construction plans and documentation, including shop drawings and other documents in whatever media to be used in construction of the Project ("PROJECT Construction Documents"); and

WHEREAS, the PROJECT, and the resulting PROJECT improvements ("PROJECT Improvements"), with the exception of those located within the Des Moines River, are located on property owned or leased by the City of Des Moines, Iowa ("CITY"); and

WHEREAS, the CITY has entered into an Agreement with CIWT and the MPO regarding the design and construction of the PROJECT Improvements and the CITY's financial contribution for the PROJECT as part of the BUILD Grant, which agreement requires MPO to ensure that the CITY obtains an unlimited, non-exclusive, perpetual copyright license to the PROJECT Designs and Plans ("the MPO, CIWT and City BUILD Grant Agreement"); and

WHEREAS, the MPO, CIWT and City BUILD Grant Agreement, references the 28E Agreement between the CITY and CIWT that addresses the governance, operation, maintenance of the regional water trail access points and downtown water trail locations; and provides, with some exceptions, that land-based PROJECT Improvements designed under the Agreement will be owned by the CITY and CIWT will own the in-water PROJECT Improvements, as more fully described in the MPO, CIWT and City BUILD Grant Agreement; and

WHEREAS, MPO is responsible for fully compensating CONTRACTOR for PROJECT construction and PROJECT Construction Documents under the Construction Agreement and desires to grant the CITY an unlimited, non-exclusive, perpetual copyright license in the PROJECT Construction Documents as further described below in order for the CITY to maintain, operate and exercise its ownership rights in the PROJECT Improvements.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

In consideration of the payment which will be received under the Construction Agreement, wherein CONTRACTOR provides construction and construction services for the PROJECT Improvements, which CONTRACTOR acknowledges as full and good compensation from MPO for creation of the PROJECT Construction Documents, and in acknowledgement of the receipt and sufficiency of full consideration for the License rights granted, indemnification and warranty provided to the CITY herein, CONTRACTOR hereby irrevocably grants the City of Des Moines, Iowa, including its assigns, a non-exclusive, unlimited, perpetual, royalty-free, and transferable copyright License to use, reproduce, distribute, adapt, prepare derivative works of and publish for the purpose of construction, bidding, operating and maintaining, altering and adding to the PROJECT, the PROJECT final Construction Documents, created by CONTRACTOR or its sub-contractors pursuant to the Construction Agreement:

All final PROJECT Construction Documents, including plans, elevations, schedules, diagrams, specifications, studies, plans, images, schematics, survey notes, reports, records and other documents, in whatever form, prepared by CONTRACTOR or its sub- contractors for the PROJECT, including without limitation, shop drawings.

The CITY shall be the owner of all rights to derivative works created by the CITY or its agents under this License, including all right, title and interest, including copyright interest therein.

CONTRACTOR shall not be responsible to the CITY for use of the PROJECT Construction Documents for a project other than the PROJECT Construction Documents and the purpose for which the Construction Documents were prepared.

CONTRACTOR warrants and represents, that to the best of its knowledge, the above described PROJECT construction plans are original and are free from any claims of intellectual property rights, proprietary rights, or other rights or interests of any third party, including any employee, agent, contractor, sub-consultant, subcontractor, subsidiary or affiliate of CONTRACTOR and that the undersigned has full authority to grant this License. CONTRACTOR will hold CITY harmless for breach of this warranty.

CONTRACTOR represents and agrees that its services in creating the PROJECT construction plans and in performing construction of the PROJECT were performed with that degree of care, skill, and diligence ordinarily exercised under similar conditions and in the performance of projects of a similar nature to the PROJECT by competent members of the construction industry/ professions. CONTRACTOR represents that it has the experience and expertise necessary to provide construction and construction plan services to result in a functional, operating PROJECT.

CONTRACTOR further represents and warrants that the PROJECT was constructed reasonably and in good faith, in accordance with generally recognized engineering or safety standards or design theories in existence at the time of construction of the PROJECT.

CONTRACTOR agrees to defend, pay on behalf of, indemnify, and hold harmless the City of Des Moines, Iowa, its elected and appointed officials, employees and volunteers and others working on behalf of the CITY in compliance with Attachment 1.

The effective date of this License shall be on the date of execution by the CITY.

AGREED: CONTRACTOR

, President

Date

ACCEPTED:

CITY OF DES MOINES, IOWA

T. M. Franklin Cownie, Mayor

Date

Attachment 1 to ATTACHMENT A

**CITY OF DES MOINES, IOWA
CONSTRUCTION**

INDEMNIFICATION REQUIREMENTS

To the fullest extent permitted by law, CONTRACTOR agrees to defend, pay on behalf of, indemnify, and hold harmless the CITY and MPO against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith including, but not limited to, attorneys' fees and court costs that may be asserted or claimed against, recovered from or suffered by the CITY or MPO by reason of any injury or loss including, but not limited to, personal injury, bodily injury including death, property damage including loss of use thereof, and economic damages that arise out of or are in any way connected or associated with CONTRACTOR'S work or services under this Contract, including that of its officers, agents, employees, subcontractors and others under the control of CONTRACTOR, except to the extent caused by or resulting from the negligent act or omission of the CITY, MPO or their respective employees, consultants, agents or others for whom they are respectively responsible.

CONTRACTOR'S obligation to indemnify the CITY and MPO contained in this Contract is not limited by the amount or type of damages, compensation or benefits payable under any workers' compensation acts, disability benefit acts, or other employee benefits acts.

Neither the CITY or MPO shall be liable or in any way responsible for any injury, damage, liability, claim, loss or expense incurred by CONTRACTOR arising out of or in any way connected or associated with CONTRACTOR'S work or services, including that of its officers, agents, employees, subcontractors and others under the control of CONTRACTOR, except to the extent caused by or resulting from the negligent act or omission of the CITY, MPO or their respective employees, consultants, agents or others for whom they are respectively responsible.

CONTRACTOR expressly assumes responsibility for any and all damage caused to CITY property arising out of or in any way connected or associated with CONTRACTOR'S work or services under this Contract, including that of its officers, agents, employees, subcontractors and others under the control of CONTRACTOR.

CONTRACTOR shall ensure that its activities on CITY property will be performed and supervised by adequately trained and qualified personnel and CONTRACTOR will observe all applicable safety rules.