

WHEATON PARK DISTRICT

RESOLUTION NO. 2013-07

**Resolution Approving and Authorizing Execution of a Tender
Agreement with Western Surety Company
for Performance of Asphalt Project at Seven Gables Park**

* * * *

WHEREAS, the Wheaton Park District (“Park District”) is a unit of local government operating pursuant to the Illinois Park District Code, 70 ILCS 1205/1-1 et seq.; and

WHEREAS, pursuant to Section 8-1 of the Park District Code [70 ILCS 1205/8-1] the Park District on August 8, 2012 entered into an Agreement with Center Court Solutions (CCS) (the “Original Contract”) for work known as the 2012 Asphalt Project at Seven Gables Park (the “Project”) and in accordance with the Project requirements CCS procured and delivered to the Park District a performance bond (the “Bond”) issued by Western Surety Company (“Western”); and

WHEREAS, CCS never commenced performance of the Project and as a result of its failure to commence the work under the Original Contract, the Park District terminated its contract with CCS and made demand on Western pursuant to the terms of the Bond; and

WHEREAS, in response to the Park District’s demand, Western has: (i) procured a bid to complete the Project from Evans and Sons, Inc., a replacement contractor acceptable to the Park District (the “Replacement Contractor”) on terms acceptable to the Park District (including the Replacement Contractors procurement of insurance coverages, a performance bond and a labor and material payment bond in forms and amounts legally sufficient and acceptable to the Park District; (ii) agreed to pay the Replacement Contractor the difference between the Original Contract price and the the Replacement Contractor’s contract price for the Project; (iii) agreed to be responsible for, pay and discharge any and all liens and claims made or filed by any third party claiming under or through CCS’s Original Contract, pursuant to Western’s continuing duties under the terms of the Labor and Material Payment Bond; and

WHEREAS, the Park District has determined that it is in the public interest that it enter into a Tender Agreement with Western to resolve claims against CCS and Western and complete the Project.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Board of Park Commissioners ("Park Board") of the Wheaton Park District, DuPage County, Illinois as follows:

Section 1. All of the foregoing recitals are hereby incorporated in and made a part of this Resolution.

Section 2. The proposed form, terms and provisions of the Tender Agreement with Western providing for construction and completion of the Asphalt Project at Seven Gables Park, as presented to the Park Board at this meeting and attached hereto as Exhibit A are approved, and the President or Vice President and Secretary of the Park Board are hereby authorized and directed to execute the Agreement in the name of and on behalf of the Park District and under its corporate seal, and to deliver a copy thereof to the Western Surety Company.

Section 3. The proper officers and staff of the Park District are hereby authorized and directed to execute all such further documents and take all such further actions as they shall deem necessary and appropriate, in consultation with the Park District's legal counsel, to carry out the terms and effectuate the provisions of the Tender Agreement and to complete the Project.

Section 4. This Resolution shall be in full force and effect immediately upon its passage and approval. All Resolutions or parts of Resolutions in conflict with the provisions of this Resolution are hereby repealed.

Passed this 17 day of July, 2013.

ROLL CALL VOTE:

Res 2013-07

AYES: Kelly, Hodgkinson, Mee, Morrill, Schabel
& Vander Schueren

NAYS: _____

ABSENT: Luckehaus

 [Vice] President
Board of Park Commissioners

Attested and filed this 17th day of July, 2013.


Michael Benard, Secretary
Board of Park Commissioners

CERTIFICATION

I, Michael Benard, the Secretary of the Board of Park Commissioners of the Wheaton Park District of the County of DuPage, State of Illinois, do hereby certify that I am keeper of its books and records and that the foregoing is a true and correct copy of a Resolution duly adopted by its Board of Park Commissioners at a meeting duly convened and held on the 17th day of July, 2013.

SEAL


Secretary of the Board of Park Commissioners

TENDER AGREEMENT

THIS TENDER AGREEMENT ("Tender Agreement" or "Agreement"), is made and entered into as of this 7th day of July 2013, by and between the Wheaton Park District ("WPD") and Western Surety Company ("Western"):

RECITALS

WHEREAS, on or about August 8, 2012 Center Court Solutions, Inc. ("CCS") entered into an agreement ("Original Agreement") with WPD to perform all work as set forth in the construction documents, plans and specifications to construct and perform the 2012 Asphalt Project at Seven Gables Park Project (the "Project") for the price of \$130,000.00; a copy of the Original Agreement is attached hereto and incorporated herein by reference as Exhibit A; and

WHEREAS, on or about August 30, 2012 Western issued a separate Performance Bond and Payment Bond, each bearing number 71318741, each in the penal sum of \$143,000.00 with WPD as obligee, CCS as principal, and Western as Surety; a copy of the Performance Bond and the Payment Bond are attached hereto as Exhibits B and C respectively; and

WHEREAS, CCS never commenced performance of the Original Agreement; and

WHEREAS, on or about January 17, 2013 WPD terminated CCS' Original Agreement for default; and

WHEREAS, by letter dated January 28, 2013 WPD made demand upon Western under the Performance Bond; a copy of said letter is attached hereto as Exhibit D; and

WHEREAS, WPD represents and warrants to Western that the unpaid balance of the Original Agreement is \$130,000.00 (the "Balance of the Contract Price") and that WPD has, as of the date of this Agreement, made no payments to CCS and has not otherwise charged any amount against the Balance of the Contract Price; and

WHEREAS, WPD has agreed to pay the Balance of the Contract Price to Western or to a contractor selected to perform the work remaining under the Original Agreement; and

WHEREAS, Evans and Son Blacktop, Inc. ("Evans" or "Completion Contractor"), a contractor acceptable to WPD, has agreed to complete the Original Agreement for the sum of \$180,279.00; a copy of Evans' written proposal is attached hereto as Exhibit E; and

WHEREAS, Western has elected to tender Evans to WPD to perform the Original Agreement, subject to the conditions and limitations contained in this Agreement and without waiving its rights and equities against CCS arising out of the Original Agreement and reserving all rights, defenses and equities which are available to Western under applicable law and existing agreements including, without limitation, that certain General Agreement of Indemnity executed by CCS and others in favor of Western; and

WHEREAS, WPD has agreed to accept the tender of Evans as Completion Contractor in accordance with the terms and conditions of this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of mutual promises and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, WPD and Western do hereby covenant and agree to the following:

1. The foregoing recitals are hereby incorporated into this Tender Agreement.
2. In order to satisfy its obligations under the Performance Bond, Western has arranged for completion of the Original Agreement, in accordance with the terms and conditions contained therein, including, without limitation, all of the Contract Documents incorporated therein by reference, by tendering Evans to WPD as the Completion Contractor for the Project. WPD has agreed to accept the aforesaid tender and shall enter into a separate contract in the amount of

\$180,279.00 with Evans for completion of the work remaining under the Original Agreement (Exhibit F)(the “Completion Contract”). Provided, however, as conditions precedent to WPD’s acceptance of the tender contemplated hereby, Evans shall: (i) furnish new performance and payment bonds from a surety reasonably acceptable to WPD in the penal sum of \$198,306.90, equivalent to 110% of the dollar amount of Evan’s bid price to perform and complete the work on the Original Agreement, or such other sum required by WPD, naming WPD as the Obligee; and (ii) obtain insurance in the types and amounts required under the Original Agreement and provide proof of same to WPD.

3. In the event of any default by Evans under the Completion Contract, WPD agrees to make demand and look solely to Evans and its performance and payment bond surety for performance of Evans’ obligations under the Completion Contract, and WPD shall make no further demands and assert no further claims or liability, other than as is expressly provided for herein, upon Western, as surety for CCS.

4. Evans’ proposal to complete the work remaining under the Original Agreement, which is attached hereto as Exhibit E, in the amount of \$180,279.00, less the Balance of the Contract Price in the amount of \$130,000.00, results in a net shortfall in the amount of \$50,279.00 which constitutes the Excess Completion Cost for the Project.

5. Western shall pay to WPD the Excess Completion Costs, i.e., \$50,279.00 within twenty-one (21) days of the execution of this Agreement by all parties.

6. In addition to payment of the Excess Completion Costs, Western further agrees to pay to WPD the legal fees and expenses paid by WPD arising out of and directly related to CCS’ default and termination of the Original Agreement (the “Legal Services Payment”). WPD agrees to provide Western with copies of the relevant portions of all invoices, redacted as and if

appropriate, submitted by Tressler, LLP and copies of all checks or other evidence of payment to Tressler, LLP. By furnishing copies of Tressler LLP's invoices, Western and Wheaton agree that such act is not intended to and shall not operate as a waiver of any applicable privilege, including the attorney-client privilege or work product privilege, and Western further agrees to hold said invoices in the strictest of confidence and shall not disclose the invoices or any information related to the content of said invoices without the prior, express written consent of WPD.

7. Western understands that there may be suppliers and/or subcontractors to CCS, who may be owed money, either for earned but unpaid work or materials or as retainage or as otherwise required by the subcontracts and/or purchase orders entered into by CCS for the Project. Western commits to honor all valid claims filed by any and all such labor and material suppliers to CCS in strict accordance with the terms and conditions of the Construction Payment Bond and applicable statutes. WPD shall, if requested by Western, confirm to the best of its knowledge whether any amounts are due to CCS' suppliers and/or subcontractors for earned but unpaid material or labor for the Project within a reasonable period of time following any such request.

8. For and in consideration of the payment of the Excess Completion Cost, the Legal Services Payment by Western to WPD, and for any payments to subcontractors and suppliers of CCS as set forth in paragraph 7 above, WPD and its successors and assigns do hereby, fully and completely release, acquit and forever discharge Western, its employees, agents, representatives, consultants, attorneys, successors and assigns of and from any and all claims, rights, demands, assessments, damages, liquidated damages for delay, fines, penalties, losses, causes of action, rights of action, judgments, and expenses, including, without limitation, attorneys fees, of every

kind or nature, which WPD and its successors and assigns have had, now have or may ever claim to have, against Western, under and/or by reason of the Construction Performance Bond.

9. WPD agrees to return to Western the original Performance Bond No. 71318741 within ten (10) business days after receipt by WPD of the payment for Excess Completion Costs and Legal Services Payment.

10. Western agrees that the Payment Bond shall remain in full force and effect for the Project in respect to labor and material suppliers to CCS according to the terms contained therein and subject to such limitations and defenses as may exist at law or in equity. WPD agrees that any money paid by Western to payment bond claimants, as described in the Payment Bond, shall be credited against and reduces the penal sum of the Payment Bond.

11. WPD agrees that the penal sum of the Performance Bond and Payment Bond are each in the amount of \$143,000.00, that Western's obligations under its bonds are limited to the expenditure of the penal sum of each bond, except as otherwise provided by law or the express language of said bonds, and that nothing contained in this Agreement is intended to serve as a waiver of said penal sums as the maximum monetary limitation of Western under its Performance Bond and the Payment Bond. WPD agrees that any money paid by Western to WPD under this Agreement, including, without limitation the Excess Completion Cost and payment of any of the reserved claims, shall be credited against and shall reduce dollar for dollar the penal sum of the Performance Bond.

12. WPD, to the extent of funds received from Western and for payments made by Western to any contractor, subcontractor and/or supplier for the completion of work under the Original Agreement, does hereby assign and set-over unto Western, its successors and assigns, any and all rights, demands, claims and/or causes of action which WPD has as against CCS,

arising out of, as a result of and/or on the basis of the default and breach by CCS of the Original Agreement, and WPD gives Western, its successors and assigns, full power and authority for its own use and benefit, but at its own cost, the right to ask, demand, collect, receive, compound and/or release, and in its name or otherwise to prosecute and withdraw any claims, suits, proceedings at law or in equity as against CCS in its efforts to obtain recovery upon its rights under this assignment. Owner shall reasonably cooperate with Western in respect to the aforesaid assigned claims.

13. It is agreed that the payments and promises contained herein are in settlement of a claim and are not therefore to be construed as an admission of liability on the part of either party to this Tender Agreement.

14. This Tender Agreement contains the entire understanding and agreement of the parties hereto. All oral or written agreements prior to the effective date of this Tender Agreement which related to this Tender Agreement and the matters set forth herein are null and void. Any modification of this Tender Agreement must be made in writing and executed by the parties hereto.

15. It is understood and agreed that this Agreement shall be governed by, construed and enforced in accordance with and subject to the law of the State of Illinois.

16. Notwithstanding any provision herein to the contrary, this Agreement is entered into solely for the benefit of WPD and Western, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any other person or entity, or to acknowledge, establish or impose any legal duty to any third party. No claim as a third party beneficiary under this Agreement by any person, firm, or corporation shall be made or be valid against WPD and/or Western.

17. The parties and their signatories hereto warrant that each has the power and authority to execute this Agreement. The parties hereto have voluntarily executed this Agreement based upon their own independent investigation and review by respective counsel. The provisions of this Agreement shall be applied and interpreted in a manner consistent with each other so as to carry out the purpose and intent of the parties, but if for any reason, any provision is unenforceable or invalid, such provision shall be deemed severed from this Agreement and the remaining provisions shall be carried out with the same force and effect as if the severed portion had not been a part of this Agreement.

18. This Agreement may be signed in counterpart for it to be effective; fax signatures shall be considered original signatures.


IN WITNESS WHEREOF, this Agreement has been executed on this 17th day of July, 2013.

WESTERN SURETY COMPANY

BY: _____
Mark S. McKibbin, Authorized Representative

ATTEST: _____

WHEATON PARK DISTRICT

By: 
President, Board of Park Commissioners

ATTEST: 
Secretary, Board of Park Commissioners

The undersigned, Evans and Son Blacktop, Inc. hereby ratifies and reaffirms its May 2, 2013 proposal to Western (Exhibit F) and agrees to enter into a Completion Contract with Owner

under the terms and conditions set forth herein, including without limitation, the terms and conditions of Exhibit E hereto.

Dated: ^{SEPT}~~JULY~~ 4, 2013

EVANS AND SON BLACKTOP, INC.

By:  
Its Authorized Agent

Exhibit A
tender Agreement
Western Sydney + WPD



AIA[®]

Document A101[™] – 2007

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the August day of in the year 2012
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Wheaton Park District
102 E. Wesley
Wheaton, IL 60187

and the Contractor:
(Name, legal status, address and other information)

Center Court Solutions, Inc.
PO Box 656
Lake Forest, IL 60045

for the following Project:
(Name, location and detailed description)

2012 Asphalt Project

The Project includes replacing asphalt paths at Seven Gables Park and all other and incidental and collateral work necessary to properly complete the Project as indicated in the Contract Documents.

The Architect: Wherever the term "Architect" or the term "Engineer" appears in this Agreement and elsewhere in the Contract Documents it shall mean the Owner:
(Name, legal status, address and other information)

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201[™]-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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User Notes:

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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work indicated in the Contract Documents, except as specifically stated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

The date of commencement of the Work shall be fixed by a Notice to Proceed (hereinafter sometimes referred to as the "Commencement Date"). Prior to commencing the Work, the Contractor shall have obtained and provided to the Owner acceptable evidence of all licenses, permits, bonds and insurance indicated as being the Contractor's responsibility under the Contract Documents. Delay in the commencement of the Work attributable to the failure of the Contractor to have obtained and provided such evidence to the Owner shall not result in an extension of the date scheduled for Substantial Completion as provided in Section 3.3 below, or in any milestone date previously agreed to by the Parties in any Project Schedule.

If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

Not applicable to this Contract.

§ 3.2 The Contract Time shall be measured from the Commencement Date.

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§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than
(Paragraphs deleted)
September 21, 2012 Final Completion shall be October 5, 2012.

, subject to adjustments of this Contract Time authorized by Change Order as provided in the Contract Documents (hereinafter sometimes referred to as the "Substantial Completion Date"). The Owner and Contractor agree that the amount of time given to the Contractor under the Contract to achieve Substantial Completion is a reasonable amount of time considering the requirements of the Contract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

Time is of the essence to the contract. Should the Contractor fail to complete the Work on or before the Final Completion date stipulated in the Contract or within such extended time as may have been allowed, the Contractor shall be liable and shall pay to the Owner the sum of \$100 per calendar day, not as a penalty but as liquidated damages, for each day of overrun in the Contract Time or such extended time as may have been allowed. The liquidated damages for failure to complete the Contract on time are approximate, due to the impracticality of calculating and proving actual delay costs. The liquidated damage amount establishes the cost of delay to account for administration, engineering, inspection, and supervision during periods of extended and delayed performance. The costs of delay represented by the liquidated damage amount are understood to be a fair and reasonable estimate of the costs that will be borne by the Owner during extended and delayed performance by the Contractor for the Work, remaining incidental work, correction of work improperly completed, or repair of work damaged as a result of the Contractor. The liquidated damage amount specified will accrue and be assessed until Final Completion of the total physical Work of the Contract even though the Work may be substantially complete. The Owner will deduct these liquidated damages from any monies due or to become due to the Contractor from the Owner.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be One Hundred Thirty Thousand Dollars (\$130,000), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon and includes the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

NA

§ 4.3 Unit

(Paragraphs deleted)

prices are pursuant to Contractor's Proposal, as modified by this Agreement, attached to and incorporated into this Agreement by reference.

(Table deleted)

§ 4.4 Allowances included in the Contract Sum, if any.: NA

(Identify allowance and state exclusions, if any, from the allowance price.)

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment properly completed and accompanied by all supporting documentation and other submittals required by the Contract Documents submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, and agreed to by the Owner and not subsequently nullified by the Architect in accordance with the Contract Documents, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

Upon completion of 50% of the Work, Contractor may submit an Application for Payment for the work properly performed and approved by Owner. The remaining balance of the Contract Sum shall be paid upon Owner's final acceptance of the Work pursuant to Section 5.2 of this Agreement.

§ 5.1.3 Provided that an Application for Payment, which is in proper form and accompanied by required supporting documents and submittals, is received by the Architect not later than the 10th day of a month, certified for payment by the Architect and not subsequently nullified by the Architect in accordance with the Contract Documents, the Owner shall make payment of the certified amount to the Contractor not later than the 15th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than forty-five (45) days after the Architect receives the Application for Payment in proper form and accompanied by required supporting documents and submittals and certifies payment to the Owner. Contractor is solely responsible for any delays in payment due in whole or in part to Contractor's failure to submit its payment application timely, in proper form and accompanied by all supporting documents and submittals required under the Contract.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ten percent (10 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007, the General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ten percent (10 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007, the General Conditions.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6

(Paragraphs deleted)

may be further modified and the retainage may be reduced if and as provided in Paragraph 9.3 of the General Conditions.

§ 5.1.8

(Paragraphs deleted)

Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

(Paragraph deleted)

§ 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract in accordance with the Contract Documents except for the Contractor's responsibility to correct Work as provided in the Contract Documents, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued, and not subsequently nullified by the Owner, and the Owner has approved payment.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the
(Paragraphs deleted)
conditions set forth in Section 5.2.1, above, have been met.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1

(Paragraphs deleted)

The Parties shall make claims and resolve disputes as provided in Article 15 of the General Conditions and elsewhere in the Contract Documents.

(Paragraphs deleted)

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2007, the General Conditions and elsewhere in the Contract Documents.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007, the General Conditions and elsewhere in the Contract Documents.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201-2007 or another Contract Document, the reference refers to that provision as superseded, amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due
(Paragraphs deleted)
and at the rate provided under the Illinois Local Government Prompt Payment Act.

§ 8.3 The Owner's representative:

(Name, address and other information)

Steve Hinchce, Project Manager
Wheaton Park District
102 E. Wesley
Wheaton, IL 60187
Tel: (630) 510-4976
Email: shinchce@wheatonparks.org

§ 8.4 The Contractor's representative:

Center Court Solutions, Inc.
PO Box 656
Lake Forest, IL 60045
Tel: 847-830-5530
Fax: 847-234-1525
Email: centercourt@att.net

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

§ 8.6.1 Not less than the prevailing rate of wages as determined by the Illinois Department of Labor shall be paid to all laborers, workers and mechanics performing the Work. Contractor's bonds shall include a provision as will guarantee

Init.

the faithful performance of this prevailing wage clause as herein provided and as provided in the General Conditions. Contractor shall comply with all other requirements of the Prevailing Wage Act.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor as modified by Owner.

§ 9.1.2 The General Conditions are AIA Document A201-2007, the General Conditions of the Contract for Construction, as modified by Owner.

§ 9.1.3 The Supplementary and other Conditions of the Contract are those included in the Project Manual dated July 11, 2012.

§ 9.1.4 The Specifications:

(Paragraphs deleted)

The Specifications are those included in the Project Manual dated July 11, 2012.

(Table deleted)

§ 9.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
	Location Map	7/12
Sheet 1 of 7	Seven Gables Paths 2012 Asphalt Projects - Layout Plan	7/12
Sheet 2 of 7	Seven Gables Paths 2012 Asphalt Projects- West Path Layout Plan	7/12
Sheet 3 of 7	Seven Gables Paths 2012 Asphalt Projects- Central Path Layout Plan	7/12
Sheet 4 of 7	Seven Gables Paths 2012 Asphalt Projects- East Path Layout Plan	7/12

(Row deleted)

§ 9.1.6 The Addenda, if any:

Number	Date	Pages
1	7/25/12	1

Int.

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

1. All other documents contained in the Project Manual dated July 11, 2012.
2. Certificate of Insurance and endorsements attached to and incorporated in this Agreement by this reference.
3. Performance Bond, Labor and Material Payment Bond, attached to and incorporated in this Agreement by this reference.
4. Prevailing Wage Determination and supersedes notice attached to and incorporated in this Agreement by this reference.
5. Contractor's Proposal, as modified by this Agreement, attached to and incorporated in this Agreement by this reference.
6. Contractor's Compliance and Certifications Attachment and Substance Abuse Prevention Program Certification, attached to and incorporated in this Agreement by this reference.

ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007, the General Conditions.

(Table deleted)

This Agreement entered into as of the day and year first written above.

WHEATON PARK DISTRICT

OWNER (Signature)

(Printed name and title)

CENTER COURT SOLUTIONS, INC.

CONTRACTOR (Signature)

(Printed name and title)

Additions and Deletions Report for **AIA[®] Document A101TM – 2007**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:40:12 on 08/14/2012.

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AGREEMENT made as of the August day of in the year 2012

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Wheaton Park District
102 E. Wesley
Wheaton, IL 60187

...

Center Court Solutions, Inc.
PO Box 656
Lake Forest, IL 60045

...

2012 Asphalt Project

...

The Project includes replacing asphalt paths at Seven Gables Park and all other and incidental and collateral work necessary to properly complete the Project as indicated in the Contract Documents.

...

The Architect: Wherever the term "Architect" or the term "Engineer" appears in this Agreement and elsewhere in the Contract Documents it shall mean the Owner;

PAGE 2

The Contractor shall fully execute the Work ~~described~~indicated in the Contract Documents, except as specifically ~~indicated~~stated in the Contract Documents to be the responsibility of others.

...

The date of commencement of the Work shall be fixed by a Notice to Proceed (hereinafter sometimes referred to as the "Commencement Date"). Prior to commencing the Work, the Contractor shall have obtained and provided to the Owner acceptable evidence of all licenses, permits, bonds and insurance indicated as being the Contractor's responsibility under the Contract Documents. Delay in the commencement of the Work attributable to the failure of the Contractor to have obtained and provided such evidence to the Owner shall not result in an extension of the date scheduled for Substantial Completion as provided in Section 3.3 below, or in any milestone date previously agreed to by the Parties in any Project Schedule.

Not applicable to this Contract.

§ 3.2 The Contract Time shall be measured from the ~~date of commencement.~~ Commencement Date.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than ~~(—) days from the date of commencement, or as follows:~~

~~(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)~~

September 21, 2012 Final Completion shall be October 5, 2012.

Portion of Work

Substantial Completion Date

, subject to adjustments of this Contract Time authorized by Change Order as provided in the Contract Documents (hereinafter sometimes referred to as the "Substantial Completion Date"). The Owner and Contractor agree that the amount of time given to the Contractor under the Contract to achieve Substantial Completion is a reasonable amount of time considering the requirements of the Contract Documents.

PAGE 3

Time is of the essence to the contract. Should the Contractor fail to complete the Work on or before the Final Completion date stipulated in the Contract or within such extended time as may have been allowed, the Contractor shall be liable and shall pay to the Owner the sum of \$100 per calendar day, not as a penalty but as liquidated damages, for each day of overrun in the Contract Time or such extended time as may have been allowed. The liquidated damages for failure to complete the Contract on time are approximate, due to the impracticality of calculating and proving actual delay costs. The liquidated damage amount establishes the cost of delay to account for administration, engineering, inspection, and supervision during periods of extended and delayed performance. The costs of delay represented by the liquidated damage amount are understood to be a fair and reasonable estimate of the costs that will be borne by the Owner during extended and delayed performance by the Contractor for the Work, remaining incidental work, correction of work improperly completed, or repair of work damaged as a result of the Contractor. The liquidated damage amount specified will accrue and be assessed until Final Completion of the total physical Work of the Contract even though the Work may be substantially complete. The Owner will deduct these liquidated damages from any monies due or to become due to the Contractor from the Owner.

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be ~~(\$—One Hundred Thirty Thousand Dollars (\$130,000),~~ subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon and includes the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

~~(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)~~

NA

§ 4.3 Unit prices, if any:

~~(Identify and state the unit price, state quantity limitations, if any, to which the unit price will be applicable.)~~

prices are pursuant to Contractor's Proposal, as modified by this Agreement, attached to and incorporated into this Agreement by reference.

Item

Units and Limitations

Price Per Unit (\$0.00)

§ 4.4 Allowances included in the Contract Sum, if any: NA

Item	Price
------	-------

§ 5.1.1 Based upon Applications for Payment properly completed and accompanied by all supporting documentation and other submittals required by the Contract Documents submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, and agreed to by the Owner and not subsequently nullified by the Architect in accordance with the Contract Documents, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

PAGE 4

Upon completion of 50% of the Work, Contractor may submit an Application for Payment for the work properly performed and approved by Owner. The remaining balance of the Contract Sum shall be paid upon Owner's final acceptance of the Work pursuant to Section 5.2 of this Agreement.

§ 5.1.3 Provided that an Application for Payment, which is in proper form and accompanied by required supporting documents and submittals, is received by the Architect not later than the 10th day of a month, certified for payment by the Architect and not subsequently nullified by the Architect in accordance with the Contract Documents, the Owner shall make payment of the certified amount to the Contractor not later than the 15th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than forty-five (45) days after the Architect receives the Application for Payment. ~~(Federal, state or local laws may require payment within a certain period of time.)~~ for Payment in proper form and accompanied by required supporting documents and submittals and certifies payment to the Owner. Contractor is solely responsible for any delays in payment due in whole or in part to Contractor's failure to submit its payment application timely, in proper form and accompanied by all supporting documents and submittals required under the Contract.

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ten percent (10 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201TM-2007, A201-2007, the General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ten percent (10 %);
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007, A201-2007, the General Conditions.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 ~~shall be further modified under the following circumstances:~~

- ~~1. Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.5 of AIA Document A201-2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)~~
- ~~2. Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007 may be further modified and the retainage may be reduced if and as provided in Paragraph 9.3 of the General Conditions.~~

~~§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:
(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)~~

~~Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.~~

~~§ 5.1.8 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.~~

PAGE 5

- ~~1. the Contractor has fully performed the Contract in accordance with the Contract Documents except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, the Contract Documents, and to satisfy other requirements, if any, which extend beyond final payment; and~~
- ~~2. a final Certificate for Payment has been issued by the Architect, issued, and not subsequently nullified by the Owner, and the Owner has approved payment.~~

~~§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:~~

~~conditions set forth in Section 5.2.1, above, have been met.~~

...

§ 6.1 INITIAL DECISION MAKER

~~The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)~~

~~The Parties shall make claims and resolve disputes as provided in Article 15 of the General Conditions and elsewhere in the Contract Documents.~~

§ 6.2 BINDING DISPUTE RESOLUTION

~~For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:~~

~~(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)~~

☐ — Arbitration pursuant to Section 15.4 of AIA Document A201-2007

☐ — Litigation in a court of competent jurisdiction

☐ — Other (Specify)

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2007.

A201-2007, the General Conditions and elsewhere in the Contract Documents.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007-A201-2007, the General Conditions and elsewhere in the Contract Documents.

...

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201-2007 or another Contract Document, the reference refers to that provision as superseded, amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due ~~at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~ (Insert rate of interest agreed upon, if any.)

~~--%--~~ and at the rate provided under the Illinois Local Government Prompt Payment Act.

...

Steve Hinchee, Project Manager
Wheaton Park District
102 E. Wesley
Wheaton, IL 60187
Tel: (630) 510-4976
Email: shinchee@wheatonparks.org

...

~~(Name, address and other information)~~ Center Court Solutions, Inc.
PO Box 656
Lake Forest, IL 60045
Tel: 847-830-5530
Fax: 847-234-1525
Email: centercourt@att.net

...

§ 8.6.1 Not less than the prevailing rate of wages as determined by the Illinois Department of Labor shall be paid to all laborers, workers and mechanics performing the Work. Contractor's bonds shall include a provision as will guarantee the faithful performance of this prevailing wage clause as herein provided and as provided in the General Conditions. Contractor shall comply with all other requirements of the Prevailing Wage Act.

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§ 9.1.1 The Agreement is this executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor-Contractor as modified by Owner.

§ 9.1.2 The General Conditions are AIA Document ~~A201-2007~~, A201-2007, the General Conditions of the Contract for ~~Construction~~ Construction, as modified by Owner.

§ 9.1.3 The Supplementary and other Conditions of the ~~Contract~~ Contract are those included in the Project Manual dated July 11, 2012.

Document	Title	Date	Pages
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(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

The Specifications are those included in the Project Manual dated July 11, 2012.

Section	Title	Date	Pages
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Number	Title	Date
	<u>Location Map</u>	<u>7/12</u>
<u>Sheet 1 of 7</u>	<u>Seven Gables Paths 2012 Asphalt Projects - Layout Plan</u>	<u>7/12</u>
<u>Sheet 2 of 7</u>	<u>Seven Gables Paths 2012 Asphalt Projects- West Path Layout Plan</u>	<u>7/12</u>
<u>Sheet 3 of 7</u>	<u>Seven Gables Paths 2012 Asphalt Projects- Central Path Layout Plan</u>	<u>7/12</u>
<u>Sheet 4 of 7</u>	<u>Seven Gables Paths 2012 Asphalt Projects- East Path Layout Plan</u>	<u>7/12</u>

<u>1</u>	<u>7/25/12</u>	<u>1</u>
<u>2</u>	<u>7/26/12</u>	<u>1</u>

PAGE 7

1. ~~AIA Document E204-2007~~ AIA Document E204-2007 Digital Data Protocol Exhibit, if completed by the parties, or the following:

1. All other documents contained in the Project Manual dated July 11, 2012.

2. Certificate of Insurance and endorsements attached to and incorporated in this Agreement by this reference.

2. Other documents, if any, listed below: 3. Performance Bond, Labor and Material Payment Bond, attached to and incorporated in this Agreement by this reference.

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.) 4. Prevailing Wage Determination and supersedes notice attached to and incorporated in this Agreement by this reference

5. Contractor's Proposal, as modified by this Agreement, attached to and incorporated in this Agreement by this reference.

6. Contractor's Compliance and Certifications Attachment and Substance Abuse Prevention Program Certification, attached to and incorporated in this Agreement by this reference.

...

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.) A201-2007, the General Conditions.

Type of insurance or bond

Limit of liability or bond amount (\$0.00)

WHEATON PARK DISTRICT

CENTER COURT SOLUTIONS, INC.

Certification of Document's Authenticity

AIA® Document D401™ -- 2003

I, Nicole L. Karas, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 09:28:28 on 08/14/2012 under Order No. 7211711376_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ -- 2007, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

Nicole Karas
(Signed) n.c.

Attorney
(Title)

8/14/12
(Dated)

Exhibit B of Tender Agreement
CNA SURETY

Performance Bond

Bond No. 71318741

CONTRACTOR:

(Name, legal status and address)

Center Court Solutions, Inc.
PO Box 656
Lake Forest, IL 60045

OWNER:

(Name, legal status and address)

Wheaton Park District
102 E. Wesley Street
Wheaton, IL 60187

CONSTRUCTION CONTRACT

Date: August 29, 2012

Amount: \$130,000.00 One Hundred Thirty Thousand Dollars and 00/100

Description:

(Name and location)

2012 Asphalt Project at Seven Gables Park

SURETY: Western Surety Company: South Dakota Corporation

(Name, legal status and principal place of business)

333 S. Wabash Avenue
41st Floor
Chicago, IL 60604

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

AIA Document A312-2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

BOND

Date: August 30, 2012

(Not earlier than Construction Contract Date)

Amount: \$143,000.00 One Hundred Forty Three Thousand Dollars and 00/100

Modifications to this Bond: ☒ None

☐ See Section 16

CONTRACTOR AS PRINCIPAL

Company:

Center Court Solutions, Inc.

(Corporate Seal)

SURETY

Company:

Western Surety Company

Signature:

Name

and Title:

(Any additional signatures appear on the last page of this Performance Bond.)

Signature:

Name

and Title:

Attorney-in-Fact



(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

The Horton Group
10320 Orland Parkway
Orland Park, IL 60467
708-845-3000

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 Balance of the Contract Price. The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 Contractor Default. Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature: _____

Name and Title:

Address

Signature: _____

Name and Title:

Address

Exhibit E
c of Tender Agreement

CNA SURETY

Payment Bond

Bond No. 71318741

CONTRACTOR:

(Name, legal status and address)

Center Court Solutions, Inc.
PO Box 656
Lake Forest, IL 60045

SURETY: Western Surety Company: South Dakota Corporation

(Name, legal status and principal place of business)

333 S. Wabash Avenue
41st Floor
Chicago, IL 60604

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

AIA Document A312-2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

OWNER:

(Name, legal status and address)

Wheaton Park District
102 E. Wesley Street
Wheaton, IL 60187

CONSTRUCTION CONTRACT

Date: August 29, 2012

Amount: \$130,000.00 One Hundred Thirty Thousand Dollars and 00/100

Description:

(Name and location)

2012 Asphalt Project at Seven Gables Park

BOND

Date: August 30, 2012

(Not earlier than Construction Contract Date)

Amount: \$143,000.00 One Hundred Forty Three Thousand Dollars and 00/100

Modifications to this Bond: ☒ None

☐ See Section 18

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

Center Court Solutions, Inc.

Signature:

Name

and Title:

(Any additional signatures appear on the last page of this Payment Bond.)

SURETY

Company:

Western Surety Company

Signature:

Name

and Title:

Pamela S. Higginbotham

Attorney-in-Fact



(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

The Horton Group
10320 Orland Parkway
Orland Park, IL 60467
708-845-3000

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature: _____
Name and Title: _____
Address _____

Signature: _____
Name and Title: _____
Address _____

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Pamela S. Higginbotham , Individually

of **Orland Park, IL** its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

Surety Bond Number: 71318741

Principal: Center Court Solutions, Inc.

Obligee: Wheaton Park District

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 21st day of June, 2012.



WESTERN SURETY COMPANY

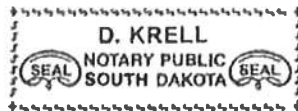
Paul T. Bruflat
Paul T. Bruflat, Vice President

State of South Dakota }
County of Minnehaha } ss

On this 21st day of June, 2012, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

November 30, 2012



D. Krell
D. Krell, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 30th day of August, 2012.



WESTERN SURETY COMPANY

L. Nelson
L. Nelson, Assistant Secretary

Authorizing By-Law

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

STATE OF ILLINOIS
COUNTY OF WILL

I, Rene' Roulo, a Notary Public in and for the state and county aforesaid, do hereby certify that Pamela S. Higginbotham of Orland Park, Illinois who is personally known to me, appeared before me this day and acknowledged that she signed, sealed and delivered the foregoing instrument as her free and voluntary act as Attorney-in-Fact of the Western Surety Company, and as the free and voluntary act of the Western Surety Company, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 30th day of August, A.D. 2012.



My commission expires August 24, 2015.
NOTARIAL JURAT

Rene' Roulo

Notary Public

Andrew S. Paine
312-627-4154
apaine@tresslerllp.com

January 28, 2013

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Mr. Mark S. McKibbin
Western Surety Company
333 S. Wabash Avenue
41st Floor
Chicago, Illinois 60604

Re:	Principal:	Center Court Solutions, Inc.
	Surety:	Western Surety Company
	Obligee:	Wheaton Park District
	Bond No.:	71318741
	Project:	2012 Asphalt Project at Seven Gables Park
	Claim No.:	9A722300
	Claimant:	Wheaton Park District

Dear Mr. McKibbin:

I write in furtherance of the above matter. As you are aware, on January 10, 2013, Wheaton Park District ("Park District") declared a Contractor Default and notified Center Court Solutions, Inc. ("Center Court") of its intention to terminate the Construction Contract between the Park District and Center Court. The Park District subsequently terminated its contract with Center Court on January 17, 2013. You were provided with copies of both of these letters, and I have again enclosed copies with this letter for your convenience.

Pursuant to Section 3.3 of the above-referenced performance bond, the Park District agrees to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to Western Surety or to a contractor selected to perform the Construction Contract.

Based on the foregoing, the Park District has now satisfied all conditions precedent to Western Surety's obligation to perform. Accordingly, the Park District expects a prompt resolution to this matter.

Very truly yours,


Andrew S. Paine

Enclosures

cc: Mr. Mike Benard
Mr. Steven B. Adams



Attorneys at Law
233 South Wacker Drive
22nd Floor
Chicago, Illinois 60606
(312) 627-4000
Fax (312) 627-1717
www.tresslerllp.com

Andrew S. Paine
312-627-4154
apaine@tresslerllp.com

January 10, 2013

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Center Court Solutions, Inc.
Attn: Ms. Alex Horsch
1301 N. Western Ave
Unit 237
Lake Forest, Illinois 60045

Center Court Solutions, Inc.
P.O. Box 656
Lake Forest, IL 60045

Mr. Mark McKibbin
Western Surety Company
333 S. Wabash Avenue
41st Floor
Chicago, Illinois 60604

**Re: Wheaton Park District - 2012 Asphalt Project at Seven Gables Park
Notice of Contractor Default and Termination**

Dear Ms. Horsch:

As you are aware, this firm is legal counsel for Wheaton Park District ("Park District"). This letter shall serve as formal notice under Article 14.2 of AIA Document A201-2007, General Conditions of the Contract for Construction, that Center Court Solutions, Inc. ("Center Court") is in default under the terms of its contract with the Park District as a result of Center Court's failure to commence and complete certain asphalt path replacement and other incidental and collateral work at Seven Gables Park despite a contractual obligation to do so (see §14.2.1.1 & §14.2.1.4). As such, the Park District intends to terminate its contract with Center Court in seven (7) days from the date of this letter.

Both parties have been aware of the Park District's concerns relative to Center Court's repudiation of the contract and its refusal to perform the work in question. The Park District has communicated these concerns to Center Court and Western Surety Company, and a satisfactory solution has not been offered.

Please also be advised that pursuant to Article 3.3 of the A101 Owner-Contractor Agreement, and in addition to any other rights or remedies the Park District may have, Center Court shall be liable for and shall pay to the Park District one-hundred dollars (\$100) per calendar day as liquidated damages for each day of overrun beyond the agreed upon final completion date of October 27, 2012. Liquidated damages will accrue and be assessed until final completion of the work in question.

Please direct any questions to the undersigned.

Very truly yours,

Andrew S. Paine

#371710

cc: Mr. Mike Benard, Executive Director, Wheaton Park District (via email)

California | Illinois | New Jersey | New York

Tressler LLP

www.tresslerllp.com

Attorneys at Law
233 South Wacker Drive
22nd Floor
Chicago, Illinois 60606
(312) 627-4000
Fax (312) 627-1717
www.tresslerllp.com

January 17, 2013

Andrew S. Paine
312-627-4154
apaine@tresslerllp.com

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Center Court Solutions, Inc.
Attn: Ms. Alex Horsch
1301 N. Western Ave
Unit 237
Lake Forest, Illinois 60045

Center Court Solutions, Inc.
P.O. Box 656
Lake Forest, IL 60045

Mr. Mark McKibbin
Western Surety Company
333 S. Wabash Avenue
41st Floor
Chicago, Illinois 60604

Re: **Wheaton Park District - 2012 Asphalt Project at Seven Gables Park
Contract Termination under Article 14**

Dear Ms. Horsch:

This letter is sent in furtherance of my January 10, 2012 letter to Center Court Solutions, Inc. ("Center Court"), and shall serve as formal notice under Article 14.2 of AIA Document A201-2007, General Conditions of the Contract for Construction, that Wheaton Park District hereby terminates its contract with Center Court, effective as of the date of this letter.

Should you have any questions, please contact the undersigned.

Very truly yours,



Andrew S. Paine

1/17/13

cc: **Mr. Mike Benard, Executive Director, Wheaton Park District (via email)**

Exhibit E of
Tender Agreement

PROJECT: 2012 Asphalt Projects

CONTRACTOR COMPLIANCE AND CERTIFICATIONS ATTACHMENT

Note: The following certifications form an integral part of the Agreement between the Owner and Contractor. Breach by Contractor of any of the certifications may result in immediate termination of the Contractor's services by Owner.

THE UNDERSIGNED CONTRACTOR HEREBY ACKNOWLEDGES, CERTIFIES, AFFIRMS AND AGREES AS FOLLOWS:

- A. Contractor has carefully read and understands the contents, purpose and legal effect of this document as stated above and hereafter in this document. The certifications contained herein are true, complete and correct in all respects.
- B. Contractor shall abide by and comply with, and in contracts which it has with all persons providing any of the services or Work on this Project on its behalf shall require compliance with, all applicable Federal, State and local laws and rules and regulations including without limitation those relating to 1) fair employment practices, affirmative action and prohibiting discrimination in employment; 2) workers' compensation; 3) workplace safety; 4) wages and claims of laborers, mechanics and other workers, agents, or servants in any manner employed in connection with contracts involving public funds or the development or construction of public works, buildings or facilities; and 5) steel products procurement.
- C. All contracts for this Project are subject to the provisions of the Illinois Prevailing Wage Act (820 ILCS 130/0.01 *et seq.*), providing for the payment of the prevailing rate of wage to all laborers, workmen and mechanics engaged in the Work. Contractor shall pay prevailing rates of wages in accordance with the wage determination included with the Contract Documents and any subsequent determinations issued by the Illinois Department of Labor which shall supersede the determination included in the Contract Documents, all in accordance with applicable law. Contractor is responsible for determining the applicable prevailing wage rates at the time of bid submission and at the time of performance of the Work. Failure of Contractor to make such determination shall not relieve it of its obligations in accordance with the Contract Documents. Contractor shall also comply with all other requirements of the Act including without limitation those pertaining to inclusion of required language in subcontracts, job site posting, maintenance and submission of certified payroll records and inspection of records. Contractor is not barred from entering into public contracts under Section 11a of the Illinois Prevailing Wage Act due to its having been found to have disregarded its obligations under the Act.

- D. To the best of Contractor's knowledge, no officer or employee of Contractor has been convicted of bribery or attempting to bribe an officer or employee of the State of Illinois, or any unit of local government, nor has any officer or employee made an admission of guilt of such conduct which is a matter of record.
- E. Contractor is not barred from bidding on or entering into public contracts due to having been convicted of bid-rigging or bid rotating under paragraphs 33E-3 or 33E-4 of the Illinois Criminal Code. Contractor also certifies that no officers or employees of the Contractor have been so convicted and that Contractor is not the successor company or a new company created by the officers or owners of one so convicted. Contractor further certifies that any such conviction occurring after the date of this certification will be reported to the Owner, immediately in writing, if it occurs during the bidding process, or otherwise prior to entering into the Contract therewith.
- F. Pursuant to the Illinois Human Rights Act (775 ILCS 5/2-105), Contractor has a written sexual harassment policy that includes, at a minimum, the following information: (i) a statement on the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment utilizing examples; (iv) the Contractor's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights and the Human Rights Commission and directions on how to contact both; and (vi) protection against retaliation as provided by Section 6-101 of the Illinois Human Rights Act. Contractor further certifies that such policy shall remain in full force and effect. A copy of the policy shall be provided to the Illinois Department of Human Rights upon request.
- G. Contractor shall abide by the "Employment of Illinois Workers on Public Works Act" (30 ILCS 570/0.01 *et seq.*) which stipulates that whenever there is a period of excessive unemployment in Illinois, defined as any month immediately following two (2) consecutive calendar months during which the level of unemployment in Illinois exceeds five percent (5%) as measured by the U.S. Bureau of Labor Statistics in its monthly publication of employment and unemployment figures, the Contractor shall employ only Illinois laborers unless otherwise exempted as so stated in the Act. ("Illinois laborer" means any person who has resided in Illinois for at least 30 days and intends to become or remain an Illinois resident). Other laborers may be used if Illinois laborers are not available or are incapable of performing the particular type of work involved if so certified by the Contractor and approved by the Owner.
- H. (i) Contractor's bid proposal was made without any connection or common interest in the profits anticipated to be derived from the Contract by Contractor with any other persons submitting any bid or proposal for the Contract; (ii) the Contract terms are in all respects fair and the Contract will

be entered into by Contractor without collusion or fraud; (iii) no official, officer or employee of the Owner has any direct or indirect financial interest in Contractor's bid proposal or in Contractor, (iv) the Contractor has not directly or indirectly provided, and shall not directly or indirectly provide, funds or other consideration to any person or entity (including, but not limited to, the Owner and the Owner's employees and agents), to procure improperly special or unusual treatment with respect to this Agreement or for the purpose of otherwise improperly influencing the relationship between the Owner and the Contractor. Additionally, the Contractor shall cause all of its officers, directors, employees, (as the case may be) to comply with the restrictions contained in the preceding sentence.

- I. Contractor knows and understands the Equal Employment Opportunity Clause administrated by the Illinois Department of Human Rights, which is incorporated herein by this reference, and agrees to comply with the provisions thereof. Contractor further certifies that Contractor is an "equal opportunity employer" as defined by Section 2000 (e) of Chapter 21, Title 42 of the United States Code Annotated and Executive Orders #11246 and #11375 as amended, which are incorporated herein by this reference.
- J. Neither Contractor nor any substantially owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the U.S. Export Administration Act of 1979 or the regulations of the U.S. Department of Commerce promulgated under that Act.
- K. Contractor is not barred from contracting with the Owner because of any delinquency in the payment of any tax administrated by the Illinois Department of Revenue, unless it is being contested. Contractor further certifies that it understands that making a false statement regarding delinquency in taxes is a Class A misdemeanor and, in addition, voids the Contract and allows the Owner, a municipal entity, to recover in a civil action all amounts paid to the Contractor.
- L. If Contractor has 25 or more employees at the time of letting of the Contract, Contractor knows, understands and acknowledges its obligations under the Illinois Drug Free Workplace Act (30 ILCS 580/1 *et seq.*) and certifies that it will provide a drug-free workplace by taking the actions required under, and otherwise implementing on a continuing basis, Section 3 of the Drug Free Workplace Act. Contractor further certifies that it has not been debarred and is not ineligible for award of this Contract as the result of a violation of the Illinois Drug Free Workplace Act.
- M. Contractor knows, understands and acknowledges its obligations under the Substance Abuse Prevention on Public Works Act, 820 ILCS 265/1 *et seq.* A true and complete copy of Contractor's Substance Abuse Prevention Program Certification is attached to and made a part of this Contractor Compliance and Certification Attachment.

- N. The Contractor shall comply with the requirements and provisions of the Freedom of Information Act (5 ILCS 140/1 et. seq.) and, upon request of the Wheaton Park District's designated Freedom of Information Act Officer (FOIA Officer), Contractor shall within two (2) business days of said request, turn over to the FOIA Officer any record in the possession of the Contractor that is deemed a public record under FOIA.

EVANS + Son Blacktop, Inc.

CONTRACTOR

By:

Its: Howard A. Jones, V.P.

STATE OF IL)

COUNTY OF DuPage)^{SS}

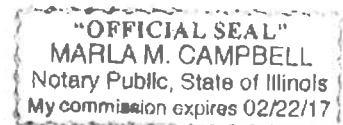
I, the undersigned, a notary public in and for the State and County, aforesaid, hereby certify that Howard A. Jones, V.P. appeared before me this day and, being first duly sworn on oath, acknowledged that he/she executed the foregoing instrument as his/her free act and deed and as the act and deed of the Contractor.

Dated: 5-2-13

(SEAL)

Marla M. Campbell

(Notary Public)



SUBSTANCE ABUSE PREVENTION PROGRAM CERTIFICATION

The Substance Abuse Prevention on Public Works Projects Act, 820 ILCS 265/1 et seq., ("Act") prohibits any employee of the Contractor or any Subcontractor on a public works project to use, possess or be under the influence of a drug or alcohol, as those terms are defined in the Act, while performing work on the project. The Contractor/Subcontractor [circle one], by its undersigned representative, hereby certifies and represents to the Wheaton Park District that [Contractor/Subcontractor must complete either Part A or Part B below]:

A. The Contractor/Subcontractor [circle one] has in place for all of its employees not covered by a collective bargaining agreement that deals with the subject of the Act a written substance abuse prevention program, a true and correct copy of which is attached to this certification, which meets or exceeds the requirements of the Substance Abuse Prevention on Public Works Act, 820 ILCS 265/1 et seq. [Contractor/Subcontractor must attach a copy of its substance abuse prevention program to this Certification.]

Evans + Son Blacktop, Inc.

Name of Contractor/Subcontractor (print or type)

Howard A. Jones, Vice President

Name and Title of Authorized Representative (print or type)

[Signature]

Signature of Authorized Representative

Dated: 5-2-13

B. The Contractor/Subcontractor [circle one] has one or more collective bargaining agreements in effect for all of its employees that deal with the subject matter of the Substance Abuse Prevention on Public Works Projects Act, 820 ILCS 265/1 et seq.

Evans + Son Blacktop, Inc.

Name of Contractor/Subcontractor (print or type)

Howard A. Jones, Vice President

Name and Title of Authorized Representative (print or type)

[Signature]

Signature of Authorized Representative

Dated: 5-2-13

EXHIBIT F of *tender agreement.*
BID PROPOSAL FORM

The undersigned bidder agrees that should this proposal be accepted by CNA and the Wheaton Park District, he/she will be bound to CNA and/or the Wheaton Park District per the Instructions to Bidders to furnish all labor, material, tools, and equipment, and perform all work necessary for CNA and/or the Wheaton Park District to complete the construction of all items detailed in the drawings, written specifications, and this bid package for the amounts set forth as follows:

BASE BID

Seven Gables West Path	\$ <u>102,280</u>
Seven Gables Central Paths	\$ <u>38,413</u>
Seven Gables East Paths	\$ <u>37,625</u>
Payment & Performance Bonds	\$ <u>1,961</u>
Total Base Bid	\$ <u>180,279</u>

Acknowledgment of Completion Contract Addendum: # 1 dated 7-25-12
2 dated 7-26-12

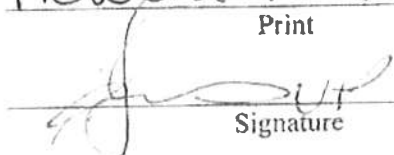
Alternate #1 Bid \$ 24,019

Evans and Son Blacktop, Inc.
Company

5-2-13
Date

31775 Powis rd, West Chicago, IL
Address

Howard A. Jones, V.P.
Print


Signature