

AIA[®] Document A101[™] – 2017

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

AGREEMENT made as of the Fifteenth day of May in the year Two Thousand Nineteen
(In words, indicate day, month and year.)

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

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

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

Evans & Son Blacktop, Inc.
3N775 Powis Road
West Chicago, IL 60185

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

Atten Park Pickleball Courts, Basketball Court and Fencing Project
1720 S. Wiesbrook Road
Wheaton, IL 60189

The Project includes converting four (4) asphalt basketball half courts into two (2) pickleball courts and one (1) basketball half court, installing chain link fencing in the asphalt around the courts and connecting to the existing chain link fencing, and all other incidental and collateral work necessary to properly complete the Project as indicated in the Contract Documents.

The Architect:
(Name, legal status, address and other information)

NA. No Architect is being used for this Project. For purposes of this Project, "Architect" shall mean "Owner."

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.

The parties should complete A101[™]–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201[™]–2017, 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.

Init.

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The Owner and Contractor agree as follows.

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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 described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. 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.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

- ☐ The date of this Agreement.
- ☐ A date set forth in a notice to proceed issued by the Owner.
- ☒ Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

June 1, 2019

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

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§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

☐ Not later than () calendar days from the date of commencement of the Work.

☒ By the following date: June 15, 2019

Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Final Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

☐ Not later than () calendar days from the date of commencement of the Work.

☒ By the following date: June 30, 2019

§ 3.3.2

(Paragraphs deleted)

Reserved.

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

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 Sixty Thousand and 00/100 Dollars (\$ 60,000.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
NA	

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
NA		

§ 4.3 Allowances, if any, included in the Contract Sum:

(Identify each allowance.)

Item	Price
NA	

§ 4.4 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
PETROTAC (4591) 24 inch wide STRIP	Per LF	\$2.70
MEMBRANE for crack repair		

§ 4.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

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The parties agree that time is of the essence of this Agreement. If the Contractor fails to achieve Substantial Completion of the Work by the Substantial Completion date(s) established in the Contract Documents and/or as established in the approved construction schedules, as may be adjusted by extensions of time contained in fully-executed Change Orders, if any (the "Scheduled Date(s) of Substantial Completion"), the Contractor shall be liable to and shall pay the Owner the amount of \$100.00 per calendar day for each and every such day between the Scheduled Date(s) of Substantial Completion and the actual date(s) of Final Completion, and the Owner may set off and deduct such amounts from payments due, or which may later become due, to the Contractor.

The parties stipulate and agree that this provision is fair and reasonable, and the per day rate established in this Section is fair and reasonable, considering the nature of the harm that may be incurred by the Owner as a result of such delay, and the difficulty or impossibility of ascertaining, calculating, and/or proving the actual damages resulting from such delay. The parties stipulate and agree that this Section 4.5 is a valid and enforceable liquidated delay damages clause, and is not a penalty. The liquidated damages clause contained in this Section 4.5 shall be Owner's sole and exclusive remedy against Contractor for delay.

§ 4.6 Other:

(Insert provisions, if any, that might result in a change to the Contract Sum.)

Overtime, if and when specifically authorized in writing in advance by the Owner shall be paid by the Owner on the basis of premium payment if any, plus the cost of insurance and taxes based on the premium payment period. No overhead or profit may be charged for overtime. The Contractor shall not be entitled to any payment for overtime necessitated by the failure of the Contractor to perform the Work in accordance with the Contract Documents including without limitation to the Contractor's failure to prosecute the Work diligently and on an uninterrupted basis and with a sufficient workforce so as to achieve completion of the Work within the time and in the manner contemplated by the Contract Documents, or otherwise due to the fault of the Contractor. In such instances if the Owner requires the Contractor to perform Work on an overtime basis, all costs for and associated with such overtime shall be borne by the Contractor.

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 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:

§ 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 1st day of a month, certified for payment by the Owner and not subsequently nullified by the Owner in accordance with the Contract Documents, the Owner shall make payment of the amount certified to the Contractor not later than the 1st day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than sixty (60) 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.

(Federal, state or local laws may require payment within a certain period of time.)

§ 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 of values 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 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified by Owner, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work.
- .2 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; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017, as modified by Owner;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017, as modified by Owner;
- .5 Retainage withheld pursuant to Section 5.1.7; and
- .6 Any other reduction authorized by the Contract Documents.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Ten Percent (10%)

§ 5.1.7.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

NA

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

In accordance with Article 9 of the AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified by Owner.

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant

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to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage upon Substantial Completion.)

NA

§ 5.1.8 Reserved. § 5.1.9 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.

§ 5.2 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; provided that Owner shall have no obligation to make final payment if the Contractor is required to correct Work as provided in Article 12 of AIA Document A201–2017, as modified by Owner, or as otherwise specified by 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 and Owner has approved payment.

§ 5.2.2 The Owner's final payment to the Contractor for Work properly performed shall be made in accordance with the Local Government Prompt Payment Act, 50 ILCS 505/1 *et seq.*, after the Owner's receipt from the Architect of the Architect's final Certificate for Payment

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest only as provided in the Local Government Prompt Payment Act, 50 ILCS 505/1 *et seq.*

§ 5.4 Waiver Procedure/Format

The first Application for Payment shall be accompanied by the Contractor's Partial Waiver of Lien to date for the full amount of the payment. Each subsequent monthly payment application shall be accompanied by the Contractor's Partial Waiver of Lien and the Partial Waivers by of subcontractors and suppliers who were included in the immediately preceding payment application to the extent of that payment. The Application for Final Payment shall be accompanied by Final Waivers of lien from the Contractor, subcontractors, and suppliers who have not previously furnished such Final Waivers. Final Waivers shall be for the full amount of the Contract and the Final Waiver of a Subcontractor shall be for the full amount of its Subcontract. All applications for payment shall be accompanied by affidavits from the Contractor, in triplicate, containing such information and in such form to comply with the Illinois Mechanics Lien Act (770 ILCS 60/001 *et seq.*) and showing in detail the sources of all labor and materials used and contracted to be used on the Project, including names and addresses of subcontractors and materials suppliers; amounts paid and remaining to be paid to each; together with all other documents as shall be necessary, in the sole judgment of the Owner, to waive all claims of liens to date and comply with all applicable state and local laws.

(i) All waivers (partial and final) shall include language as applicable indicating either that:

1. All materials were taken from fully paid stock and delivered to job site in our own vehicles and all labor has been fully paid in accordance with prevailing wage laws; or
2. Materials were provided by the following suppliers from whom waivers of lien are attached and all labor has been fully paid in accordance with prevailing wage laws.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker to the extent provided in Article 15 of AIA Document A201–2017, as amended by Owner, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

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(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, as modified by Owner, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2017

☐ Litigation in a court of competent jurisdiction

☒ Other *(Specify)*

As provided in the AIA Document A201–2017, as amended by Owner.

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 A201–2017, as amended by Owner.

§ 7.1.1 If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A201–2017, as amended by Owner, then the Owner shall pay the Contractor a termination fee as follows:
(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)

Owner shall pay no termination fee to Contractor.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017, as amended by Owner.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended by Owner and included in the Project Manual.

§ 8.2 The Owner’s representative:
(Name, address, email address, and other information)

Brian Morrow
Wheaton Park District
1000 Manchester Road
Wheaton, IL 60187
Email: bmorrow@wheatonparks.org
Tel: 630-510-4975

§ 8.3 The Contractor’s representative:
(Name, address, email address, and other information)

Howard A. Jones
Evans & Son Blacktop, Inc.

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3N775 Powis Road
West Chicago, IL 60185
Email: Nick@blacktop.biz
Tel: 630-377-1212 x 112

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

§ 8.5 Insurance and Bonds

§ 8.5.1 The Contractor shall purchase and maintain insurance and shall provide bonds with limits and amounts as set forth in AIA Document A201–2017, as amended by Owner.

(Paragraph deleted)

§ 8.6 Reserved.

§ 8.7 Other provisions:

§ 8.7.1 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.

§ 8.7.2 The Contractor shall be responsible for the supply and maintenance of any and all temporary equipment, utilities and facilities necessary to properly and safely complete and protect the Work, including without limitation those required by winter conditions. The Contractor shall provide and erect barricades and other safeguards adequate to warn of danger at the site and to protect persons and property from injury resulting from the Work.

§ 8.7.3 The Contractor shall limit materials and equipment storage to the immediate area of Work and such other areas as the Owner may designate. The Contractor shall promptly remove and properly dispose all construction material, trash, garbage and other debris off site.

§ 8.7.4 Except as otherwise specifically provided in the Contract Documents, if and to the extent of any inconsistency, ambiguity, conflict, discrepancy or error in the Contract Document, and otherwise in interpreting the Contract Documents, the Parties shall give precedence to the Contract Documents in the following order of priority:

- (i) Modifications.
- (ii) This Agreement
- (iii) Supplementary and Special Conditions.
- (iv) General Conditions
- (v) Construction Drawings

§ 8.7.5 The rights and remedies of the Owner stated in the Contract Documents shall be in addition to and not in limitation of any other rights of the Owner granted at law or in equity.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor, as amended by Owner;

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- .2 AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended by Owner;

(Paragraph deleted)

- .3 Drawings. The Drawings are those included in the Project Manual dated April 17, 2019.

Number	Title	Date
--------	-------	------

- .4 Specifications. The Specifications are those included in the Project Manual dated April 17, 2019.

Section	Title	Date	Pages
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- .5 Addenda, if any:

Number	Date	Pages
No. 1	April 24, 2019	1 plus 7 pages of attachments
No. 2	April 26, 2019	1 plus 5 pages of attachments

- .6 Other Exhibits:
(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

(Paragraphs deleted)

- [] Supplementary and other Conditions of the Contract are those included in the Project Manual dated April 17, 2019:

Document	Title	Date	Pages
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- .7 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

1. All other documents contained in the Project Manual dated April 17, 2019.
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 the Contract Documents, attached to and incorporated in this Agreement by this reference.

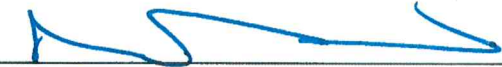
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6. Contractor's Compliance and Certifications Attachment and Substance Abuse Prevention Program Certification, attached to and incorporated in this Agreement by this reference.

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

WHEATON PARK DISTRICT

EVANS & SON BLACKTOP, INC.



OWNER (Signature)

Michael Benard - Executive Director

(Printed name and title)



CONTRACTOR (Signature)

Howard Jones Vice President

(Printed name and title)

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Additions and Deletions Report for AIA® Document A101™ – 2017

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 14:07:05 ET on 05/23/2019.

PAGE 1

AGREEMENT made as of the Fifteenth day of May in the year Two Thousand Nineteen

...

(Name, legal status, address and other information)

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

...

Evans & Son Blacktop, Inc.
3N775 Powis Road
West Chicago, IL 60185

...

Atten Park Pickleball Courts, Basketball Court and Fencing Project
1720 S. Wiesbrook Road
Wheaton, IL 60189

The Project includes converting four (4) asphalt basketball half courts into two (2) pickleball courts and one (1) basketball half court, installing chain link fencing in the asphalt around the courts and connecting to the existing chain link fencing, and all other incidental and collateral work necessary to properly complete the Project as indicated in the Contract Documents.

The Architect:

...

NA. No Architect is being used for this Project. For purposes of this Project, "Architect" shall mean "Owner."

PAGE 3

EXHIBIT A – INSURANCE AND BONDS

...

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

...

☒ Established as follows:

...

June 1, 2019

PAGE 4

☒ By the following date: June 15, 2019

Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Final Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

☐ Not later than () calendar days from the date of commencement of the Work.

☒ By the following date: June 30, 2019

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work

Substantial Completion Date

Reserved.

...

§ 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 Sixty Thousand and 00/100 Dollars (\$ 60,000.00), subject to additions and deductions as provided in the Contract Documents.

...

NA

...

NA

...

NA

...

PETROTAC (4591) 24 inch wide STRIP
MEMBRANE for crack repair

Per LF

\$2.70

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The parties agree that time is of the essence of this Agreement. If the Contractor fails to achieve Substantial Completion of the Work by the Substantial Completion date(s) established in the Contract Documents and/or as established in the approved construction schedules, as may be adjusted by extensions of time contained in fully-executed Change Orders, if any (the "Scheduled Date(s) of Substantial Completion"), the Contractor shall be liable to and shall pay the Owner the amount of \$100.00 per calendar day for each and every such day between the Scheduled Date(s) of Substantial Completion and the actual date(s) of Final Completion, and the Owner may set off and deduct such amounts from payments due, or which may later become due, to the Contractor.

The parties stipulate and agree that this provision is fair and reasonable, and the per day rate established in this Section is fair and reasonable, considering the nature of the harm that may be incurred by the Owner as a result of such delay, and the difficulty or impossibility of ascertaining, calculating, and/or proving the actual damages resulting from such delay. The parties stipulate and agree that this Section 4.5 is a valid and enforceable liquidated delay damages clause, and is not a penalty. The liquidated damages clause contained in this Section 4.5 shall be Owner's sole and exclusive remedy against Contractor for delay.

...

(Insert ~~provisions for bonus or other incentives, provisions, if any, that might result in a change to the Contract Sum.~~)

Overtime, if and when specifically authorized in writing in advance by the Owner shall be paid by the Owner on the basis of premium payment if any, plus the cost of insurance and taxes based on the premium payment period. No overhead or profit may be charged for overtime. The Contractor shall not be entitled to any payment for overtime necessitated by the failure of the Contractor to perform the Work in accordance with the Contract Documents including without limitation to the Contractor's failure to prosecute the Work diligently and on an uninterrupted basis and with a sufficient workforce so as to achieve completion of the Work within the time and in the manner contemplated by the Contract Documents, or otherwise due to the fault of the Contractor. In such instances if the Owner requires the Contractor to perform Work on an overtime basis, all costs for and associated with such overtime shall be borne by the Contractor.

...

§ 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 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.

...

§ 5.1.3 Provided that an Application for ~~Payment~~ Payment, which is in proper form and accompanied by required supporting documents and submittals, is received by the Architect not later than the 1st day of a month, certified for payment by the Owner and not subsequently nullified by the Owner in accordance with the Contract Documents, the Owner shall make payment of the amount certified to the Contractor not later than the 1st day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than sixty (60) days after the Architect receives the Application for ~~Payment~~ 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.

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§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified by Owner, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

...

- .1 That portion of the Contract Sum properly allocable to completed ~~Work~~Work.

...

- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document ~~A201–2017~~A201–2017, as modified by Owner;

...

- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document ~~A201–2017~~and A201–2017, as modified by Owner;
- .5 Retainage withheld pursuant to Section ~~5.1.7.5.1.7~~5.1.7; and
- .6 Any other ~~reduction~~ authorized by the Contract Documents.

...

Ten Percent (10%)

...

NA

...

In accordance with Article 9 of the AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified by Owner.

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NA

§ 5.1.8 ~~If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.~~

Reserved. **§ 5.1.9** 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.

...

- .1 the Contractor has fully performed the Contract ~~except for the Contractor's responsibility in accordance with the Contract Documents; provided that Owner shall have no obligation to make final payment if the Contractor is required to correct Work as provided in Article 12 of AIA Document A201–2017, as modified by Owner, or as otherwise specified by 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~~Architect and 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 for Work properly performed shall be made in accordance with the Local Government Prompt Payment Act, 50 ILCS 505/1 et seq., after the Owner's receipt from the Architect of the Architect's final Certificate for Payment, or as follows:~~Payment

...

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 only as provided in the Local Government Prompt Payment Act, 50 ILCS 505/1 et seq.~~

§ 5.4 Waiver Procedure/Format

The first Application for Payment shall be accompanied by the Contractor's Partial Waiver of Lien to date for the full amount of the payment. Each subsequent monthly payment application shall be accompanied by the Contractor's Partial Waiver of Lien and the Partial Waivers by of subcontractors and suppliers who were included in the immediately preceding payment application to the extent of that payment. The Application for Final Payment shall be accompanied by Final Waivers of lien from the Contractor, subcontractors, and suppliers who have not previously furnished such Final Waivers. Final Waivers shall be for the full amount of the Contract and the Final Waiver of a Subcontractor shall be for the full amount of its Subcontract. All applications for payment shall be accompanied by affidavits from the Contractor, in triplicate, containing such information and in such form to comply with the Illinois Mechanics Lien Act (770 ILCS 60/001 et seq.) and showing in detail the sources of all labor and materials used and contracted to be used on the Project, including names and addresses of subcontractors and materials suppliers; amounts paid and remaining to be paid to each; together with all other documents as shall be necessary, in the sole judgment of the Owner, to waive all claims of liens to date and comply with all applicable state and local laws.

(i) All waivers (partial and final) shall include language as applicable indicating either that:

1. All materials were taken from fully paid stock and delivered to job site in our own vehicles and all labor has been fully paid in accordance with prevailing wage laws; or
(Insert rate of interest agreed upon, if any.)2. Materials were provided by the following suppliers from whom waivers of lien are attached and all labor has been fully paid in accordance with prevailing wage laws.

—%

...

The Architect will serve as the Initial Decision Maker ~~pursuant to to the extent provided in~~ Article 15 of AIA Document A201–2017, ~~as amended by Owner,~~ unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

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For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, as modified by Owner, the method of binding dispute resolution shall be as follows:

...

[☒] Other (*Specify*)

If the Owner and Contractor do not select a method of binding dispute resolution, 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. As provided in the AIA Document A201–2017, as amended by Owner.

...

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document ~~A201-2017~~A201-2017, as amended by Owner.

§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document ~~A201-2017~~, as amended by Owner, then the Owner shall pay the Contractor a termination fee as follows:

...

Owner shall pay no termination fee to Contractor.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document ~~A201-2017~~A201-2017, as amended by Owner.

...

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201-2017 or another Contract Document, the reference refers to that provision as amended ~~or supplemented by other provisions of the Contract Documents~~by Owner and included in the Project Manual.

...

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Email: bmorrow@wheatonparks.org
Tel: 630-510-4975

...

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§ 8.5.1 ~~The Owner and the Contractor shall purchase and maintain insurance and shall provide bonds with limits and amounts as set forth in AIA Document A101™ 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.~~A201-2017, as amended by Owner.

...

§ 8.5.2 ~~The Contractor shall provide bonds as set forth in AIA Document A101™ 2017 Exhibit A, and elsewhere in the Contract Documents.~~

§ 8.6 ~~Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:~~

~~(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)~~Reserved.

...

§ 8.7.1 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.

§ 8.7.2 The Contractor shall be responsible for the supply and maintenance of any and all temporary equipment, utilities and facilities necessary to properly and safely complete and protect the Work, including without limitation those required by winter conditions. The Contractor shall provide and erect barricades and other safeguards adequate to warn of danger at the site and to protect persons and property from injury resulting from the Work.

§ 8.7.3 The Contractor shall limit materials and equipment storage to the immediate area of Work and such other areas as the Owner may designate. The Contractor shall promptly remove and properly dispose all construction material, trash, garbage and other debris off site.

§ 8.7.4 Except as otherwise specifically provided in the Contract Documents, if and to the extent of any inconsistency, ambiguity, conflict, discrepancy or error in the Contract Document, and otherwise in interpreting the Contract Documents, the Parties shall give precedence to the Contract Documents in the following order of priority:

- (i) Modifications.
- (ii) This Agreement
- (iii) Supplementary and Special Conditions.
- (iv) General Conditions
- (v) Construction Drawings

§ 8.7.5 The rights and remedies of the Owner stated in the Contract Documents shall be in addition to and not in limitation of any other rights of the Owner granted at law or in equity.

...

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor, as amended by Owner;
- .2 AIA Document A101™-2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below: Construction, as amended by Owner;
(Insert the date of the E203-2013 incorporated into this Agreement.)

.5 Drawings. .3 Drawings. The Drawings are those included in the Project Manual dated April 17, 2019.
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- .6 Specifications. .4 Specifications. The Specifications are those included in the Project Manual dated April 17, 2019.

...

- .7 Addenda, if any:

...

<u>No. 1</u>	<u>April 24, 2019</u>	<u>1 plus 7 pages of attachments</u>
<u>No. 2</u>	<u>April 26, 2019</u>	<u>1 plus 5 pages of attachments</u>

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

~~8~~ 6 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

☐ AIA Document E204™ 2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

☐ ~~The Sustainability Plan:~~

Title

Date

Pages

☐ Supplementary and other Conditions of ~~the Contract~~ the Contract are those included in the Project Manual dated April 17, 2019:

...

~~9~~ 7 Other documents, if any, listed below:

...

1. All other documents contained in the Project Manual dated April 17, 2019.

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 the Contract Documents, 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.

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

WHEATON PARK DISTRICT

EVANS & SON BLACKTOP, INC.

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848852

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 14:07:05 ET on 05/23/2019 under Order No. 0475225765 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™ – 2017, 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.

(Signed)

(Title)

(Dated)

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(Signed)

Attorney

(Title)

05/23/2019

(Dated)