

AGREEMENT FOR SUPPLY AND SERVICING OF PORTABLE RESTROOMS

This Agreement for Supply and Servicing of Portable Restrooms (the "Agreement"), made this 20th day of December, 2024, by and between the Wheaton Park District, an Illinois park district (the "Park District") with its principal place of business at 102 E. Wesley Street, Wheaton, Illinois, and Flood's Royal Flush, Inc., an Illinois corporation (the "Contractor"), with its principal place of business at 180 Poplar Place, North Aurora, IL 60542, collectively referred to as the "Parties" or individually as "Party."

- A. The District desires to provide portable restrooms and services for patrons using the District's parks and other outdoor facilities.
- B. Contractor has represented to the District that Contractor is an experienced portable restroom provider capable of providing quality and sanitary portable restrooms and services, and Contractor desires to provide said restrooms and services.
- C. The District deems it in the best interest of the District to enter into an agreement with the Contractor to provide the portable restrooms and related services.

NOW THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, receipt of which each Party hereby acknowledges, the Parties respectively agree and represent as follows:

WITNESSETH

That the Park District and Contractor, for the consideration hereinafter named, agree as follows:

1. Labor and Materials

The Contractor shall provide all labor, equipment and materials for the supply of portable restrooms and related services in accordance with the Contract Documents (the "Services" for the **Term** specified in Paragraph 3 of this Agreement).

2. Contract Documents

The Contract Documents consist of this Agreement between the Park District and the Contractor, the Invitation to Bid, Instruction to Bidders, General Terms and Conditions, Contractor's Bid Form dated November 26, 2024 and attached to and incorporated as part of this Agreement as **Exhibit A**, Contractor's Compliance and Certifications Attachment, attached to and incorporated as part of this Agreement as **Exhibit B**, and any modifications issued after the execution of this Agreement. Modifications to this Contract may only be made in writing and endorsed by the Parties. All of the terms, conditions and specifications contained in the Project Manual are incorporated herein.

The Contract Documents represent the entire agreement between the Parties, and no statement, promise or inducement made by either Party to the other Party that is not contained in the Contract Documents shall be valid or binding. In the event of any inconsistency, ambiguity, conflict, discrepancy or error in the Contract Documents, and otherwise in interpreting the Contract Documents, the Parties shall give precedence to the Contract Documents in the following order of priority: a) Modifications; b) this Agreement and the General Conditions; c) Specifications; and d) Contractor's Proposal.

3. Term

The term of this Agreement shall be for one (1) year, commencing on January 1, 2025 and expiring on December 31, 2025, unless terminated earlier pursuant to the terms of this Agreement (the "Initial Term").

This Agreement may be renewed by the Park District, in its sole discretion, for two (2) additional one (1) year periods as follows:

- a) commencing on January 1, 2026 and expiring on December 31, 2026 ("Second Term");
- b) commencing on January 1, 2027 and expiring on December 31, 2027 ("Third Term")

(collectively, the Initial, Second and Third Term shall be referred to as the "Term"), for the Contract Sums specified in Section 5 of this Agreement and upon such other conditions as the Parties mutually agree.

4. Performance of Work

Contractor agrees to perform all Work in a good and workmanlike manner in accordance with the Contract Documents. Contractor shall not interfere in any way with and shall cooperate fully with other contractors used by Park District for any other work at the Project sites.

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5. Contract Sum

- a. The District agrees to pay Contractor for the proper and timely performance of the Services in strict accordance with the Agreement the following estimated amounts: *See Table below.*

<u>Unit</u>	<u>Estimated Need</u>	<u>Total for Initial Term</u>
ADA Compliant Unit (Seasonal)	30	\$34,425.00
Standard Unit (Seasonal)	5	\$4,750.00
ADA Compliant Unit (Special Event)	31	\$4,185.00
Standard Unit (Special Event)	135	\$12,825.00
Hand Wash Station (Special Event)	23	\$1,380.00
Daily Cleaning (Special Event)	313	\$7,825.00

Total Estimated Amount For Services for Initial Term: \$65,390.00
(the "Contract Sum").

- b. Contractor understands and agrees that the number of units, including any related Services, needed by the District, may increase or decrease during the Initial Term and, as a result, the estimated Contract Sum shall be adjusted accordingly based on the below unit pricing, but only after Contractor has received prior written direction from the District for the requested change(s):
- i. ADA Compliant Unit - Seasonal rental fee per month (with twice a week service): \$135.00/Unit/Month (rate includes damage waiver insurance).
 - ii. Standard Unit - Seasonal rental fee per month (with twice a week service): \$95.00/Unit/Month (rate includes damage waiver insurance).
 - iii. ADA Compliant Unit - Special Event Multiple Unit Pricing (minimum 2 units): \$135.00/Unit (rate includes damage waiver insurance).
 - iv. Standard Unit - Special Event Multiple Unit Pricing (minimum 6 units): \$95.00/Unit (rate includes damage waiver insurance).
 - v. Hand Wash Station - Special Event Multiple Unit Pricing (minimum 2 units): \$60.00/Unit (rate includes damage waiver insurance).
 - vi. Extra Cleaning per unit per occurrence – To be cleaned withing 24 hours of notification: \$25.00/Unit.
 - vii. Emergency cleaning per unit per occurrence – to be cleaned ASAP same day as notification: \$45.00/Unit.

- c. In the event this Agreement is renewed for two additional terms, the maximum percentage increase applied to all unit costs shall be as follows: *See Table below.*

	Maximum Annual Percentage Increase
Term 2	2.0 %
Term 3	0.0 %

6. Payment

Contractor shall submit to the Park District monthly invoices itemizing the Work properly performed, as determined by the Park District, for the period covered by the invoice. Payments of all invoices, and any late payment penalties, shall be governed by the Local Government Prompt Payment Act (5 ILCS 505/1 *et seq.*).

7. Performance of the Services

Contractor agrees to perform all Services in a good and workmanlike manner. In performance of the Services, Contractor shall not interfere in any way with and shall cooperate fully with District employees and any other contractors procured by the District.

8. Delivery and Schedule for Cleaning and Servicing the Portable Restrooms Units

As part of the Services:

- a. Contractor shall deliver all portable restroom units (the "Units" or "Unit") in a clean, operable and sanitized condition and each Unit shall contain at least one toilet tissue holder with two rolls of paper. Contractor shall securely stake down the Units on all four corners using 2" x 2" wood stakes to help prevent the Units from falling over or being turned over.
- b. Contractor shall clean and service all Units at least once each week in accordance with Paragraph 7 of this Agreement. Additional cleaning may be required in the event of increased use of the Units. The District shall contact the Contractor regarding the need for any such additional cleaning and Contractor shall provide any said additional cleaning at an additional charge to the District as mutually agreed to by the Parties in writing prior to the performance of any such additional cleaning.
- c. Contractor shall deliver and pick-up the Units according to the schedule in **Exhibit D. of this Agreement**. If weather conditions or unstable turf prevent the cleaning

of the Units on a day the Units are designated for cleaning and servicing, Contractor shall service the Units on the first possible day following the inclement weather or, in the case of unstable turf, the first possible day when the turf conditions are returned to a stable condition.

9. Procedures for Cleaning and Servicing the Units

As part of the Services, Contractor shall perform the following procedures each time a Unit is cleaned and serviced:

- a. Pump waste from tank;
- b. Remove rocks, ice and other debris from tank;
- c. Scrub all surfaces with the appropriate brushes and cleaning solution;
- d. Clean and scrub floor of mud, ice and other debris;
- e. Scrub urinal inside and out;
- f. Remove graffiti;
- g. Add fresh water and anti-bacterial solution to the tank;
- h. Spray with deodorizer;
- i. Replace or replenish toilet tissue;
- j. Wipe off ledges above screens and door;
- k. Complete needed repairs within 24 hours of notification by Park District of the need for the repair or within 24 hours of observation of the need for the repair by the Contractor ;
- l. Schedule replacement of the Unit if needed;
- m. Confirm Unit is in the proper place and is level; and
- n. Sign and date the service log sticker in each Unit
- o. Complete emergency clean ups same day as notification by the Park District of the need for the clean up or same day as observation of need for the clean up by the Contractor.

If a Unit is blocked and cannot be pumped, the Contractor shall perform the remaining procedures on the Unit as outlined above and shall notify the Park District's Parks Services Center at (630-653-5429) of the inability to pump the Unit, identifying the specific Unit.

10. Safety of Persons and Property

A. The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, the personnel, means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. The Contractor shall all take reasonable precautions for the health and safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- i. employees engaged in the Work and other persons who may be affected thereby;

- ii. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's subcontractors or sub-subcontractors;
 - iii. Park District employees, patrons and other persons present at the site(s) of Contractor's Work; and
 - iv. Personal and real property owned by the Park District.
- B. The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
- C. The Contractor at its cost shall promptly remedy damage and loss to Park District real or personal property caused in whole or in part by the Contractor, a subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except to the extent said damage or loss is attributable to acts or omissions of the Park District or anyone directly or indirectly employed by Park District, or by anyone for whose acts Park District may be liable, and not attributable to the fault or negligence of the Contractor.

11. Warranty

Contractor warrants to the Park District that materials and equipment furnished under the Agreement will be of the best quality and new, that the Work will be free from defects and deficiencies, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

Contractor shall unconditionally guarantee the materials provided for the Work for a period of one year from the date of delivery. If, within the guarantee period, any defects or signs of defects are noted which, in the opinion of the Park District, are due to faulty materials, the Park District shall notify the Contractor. At the Contractor's expense, the Contractor shall replace or adjust the materials to the correct condition to the complete satisfaction of the Park District.

12. Correction of Deficiencies.

If Contractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within forty-eight (48) business hours after receipt of written notice from the Park District to commence and continue correction of such default or neglect with diligence and promptness, the Park District may, without prejudice to other remedies the Park District may have, correct such deficiencies. In such case, the Park District shall deduct from payments then or thereafter due Contractor the cost of correcting such deficiencies, including compensation to the Park District for any and all expenses related thereto. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to the Park District. The rights and remedies of the Park District stated in this

Agreement shall be in addition to and not in limitation of, any other rights of the Park District granted at law or in equity.

13. Cleaning Up

The Contractor shall keep the project site and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Agreement.

14. Title

Title to the waste materials removed by Contractor as part of the Work shall transfer to Contractor upon Contractor's receipt or collection of said materials unless otherwise provided by applicable law.

15. Termination

- A. The Park District may, at any time, terminate the Agreement in whole or in part for the Park District's convenience and without cause. Termination by the Park District under this section shall be by a notice of termination delivered to the Contractor specifying the extent of the termination and the effective date. Upon receipt of a notice of termination, the Contractor shall immediately, in accordance with instructions from the Park District: (1) cease operation as specified in the notice; (2) place no further orders; (3) enter into no further subcontracts for materials, labors, services or facilities except as necessary to complete continued portions of the Work; (4) terminate all subcontracts and orders to the extent they relate to the Work terminated; (5) proceed to complete the performance of Work not terminated; and, (6) take actions that may be necessary or that the Park District may direct, for the protection and preservation of the terminated Work. The Contractor shall recover payment for approved and properly performed Work completed prior to the effective date of termination. Contractor shall not be entitled to damages or lost profits resulting from termination for convenience under this Section.
- B. Park District may terminate the Agreement, in whole or in part, for cause as follows:
 - (i) In the event Contractor breaches any of the provisions of this Agreement, Park District may terminate the Agreement immediately upon written notice to Contractor, if Contractor shall not have cured such breach within forty eight (48) business hours after Park District shall have first notified Contractor of such breach in writing or, if by its nature the breach is not capable of being cured within said forty-eight (48) business hours, Contractor shall not have commenced such cure within said forty-eight (48) business hours and diligently pursued same to completion; provided, however, that if Contractor shall have repeatedly breached the same or other provisions previously, Park District may terminate the Agreement immediately without affording Contractor an opportunity to cure the breach, upon written notice to Contractor, and further provided that failure to maintain required insurance coverage shall be cause for immediate termination of the Agreement, or the immediate suspension of the

Agreement until such insurance has been obtained and satisfactory proof thereof provided to Park District, in either case upon written notice to Contractor without opportunity to cure. In the event of termination pursuant to this Section: a) the Park District shall not pay Contractor for any portion of the Work not completed in accordance with the Contract Documents; b) the Park District shall deduct from payments due to the Contractor the cost of correcting any deficiencies in accordance with Section 12 of this Agreement; and c) Contractor shall be liable to the Park District for the increased cost to the Park District of obtaining services from a substitute contractor(s).

(ii) If Contractor is adjudged as bankrupt, or if Contractor makes a general assignment for insolvency, or if any provision of the bankruptcy law is invoked by or against Contractor, then notwithstanding any other rights or remedies granted the Park District, the Park District may, without prejudice to any other right or remedy, a) immediately terminate the retention of Contractor and/or b) finish or cause to be finished the Contractor's services required under this Contract by whatever method and by whichever persons the Park District deems expedient. In such case, Contractor shall not be entitled to receive any payment until the Work is completed. If the unpaid balance of the Contract Sum exceeds: (1) the expenses of completing the Work, including compensation for additional managerial and administrative services, plus (2) the Park District's losses and damages because of Contractor's default (collectively "Park District Expenses and Damages"), such excess shall be paid to Contractor. If the Park District Expenses and Damages exceed such unpaid balance, Contractor shall pay the difference to the Park District promptly on demand and the Park District may resort to any other rights or remedies the Park District may have by law or under this Contract.

Upon termination of this Agreement for any reason, the rights and obligations of the Parties shall cease automatically except for the rights and obligations of the Parties accruing but unsatisfied prior to termination. Notwithstanding anything in this Agreement to the contrary, Contractor's obligations under Section 17 shall survive the termination or expiration of this Agreement.

16. Insurance

Contractor will procure and maintain, during the Term, the insurance coverage requirements as set forth in the bid documents and are incorporated or such other insurance coverages as shall be required by the Park District's insurer or the risk management agency of which the Park District is a member.

17. Indemnification

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless the Park District and its officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses including but not limited to legal fees (attorney's and paralegals' fees and court costs), arising out of or resulting from the performance of Contractor's performance of the Work or the products supplied by Contractor, provided that any such claim, damage, loss or expense (i) arises out of bodily injury, sickness, disease or death, or injury to or

destruction of tangible property, other than the work itself, including the loss of use resulting there from and (ii) arises from in whole or in part any act or omission of Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph. Contractor shall similarly protect, indemnify, defend and hold and save harmless the Park District, its officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of Contractor's breach of any of its obligations under, or Contractor's default of, any provision of this Agreement. Contractor's obligations under this Section shall survive the termination or expiration of this Agreement.

18. Compliance with Laws and Permits

Contractor shall comply with all applicable local, state and federal codes, laws, ordinances, rules and regulations, including but not limited to those laws specified in Contractor Compliance and Certifications Attachment. Contractor shall be licensed and bonded to perform the Work hereunder and shall, at its sole cost and obligation, be responsible for obtaining all permits required to perform its duties under this Agreement. Any breach by Contractor of the foregoing laws, regulations and rules shall constitute a breach by Contractor of this Agreement.

19. Choice of Law and Venue

This Agreement is governed by the laws of the State of Illinois. Any suit or action arising under this Agreement shall be commenced exclusively in the Circuit Court of DuPage County, Illinois, and the parties hereby consent to, and waive objection to, the exclusive jurisdiction and venue of said court, but only after exhausting all possible administrative remedies. In the event the Park District initiates litigation under, regarding or to enforce this Agreement and is the prevailing party, it shall be entitled to an award of reasonable attorneys' fees and costs of litigation. Contractor, its successors or assigns shall maintain no suit or action against the Park District on any claim based upon or arising out of this Agreement or out of anything done in connection with this Agreement unless such action shall be commenced within one year of the termination of this Agreement. Contractor acknowledges that each provision of this Agreement is important and material to the business and success of the Park District and agrees that any breach of any provision of this Agreement is a material breach of the Agreement and may be cause for immediate termination of this Agreement. In the event of a breach, Contractor shall also pay to the Park District all damages (including, but not limited to, compensatory, incidental, consequential, and punitive), which arise from the breach, together with interest, costs, and the Park District's reasonable attorneys' fees.

20. No Liability

The Park District is not responsible or liable for any injury, damages, loss or costs sustained or incurred by any person including, without limitation Contractor's employees, or for any damage

to, destruction, theft or misappropriation of any property, relating in any way, directly or indirectly, to Contractor's Work and obligations under this Agreement. The Park District is not liable for acts or omissions of Contractor or any of Contractor's employees, subcontractor's, agents or other persons purporting to act at the direction or request, on behalf, or with the implied or actual consent, of Contractor.

21. No Third-Party Beneficiary

This Agreement is entered into solely for the benefit of the contracting Parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person and/or entity who is not a party to this Agreement or to acknowledge, establish or impose any legal duty to any third party. Nothing herein shall be construed as an express and/or implied waiver of any common law and/or statutory immunities, defenses, and/or privileges of the Park District and/or Contractor, and/or any of their respective officials, officers and/or employees.

22. No Waiver

Waiver of any of the terms of this Agreement shall not be valid unless it is in writing and signed by all Parties. The failure of claimant to enforce the provisions of this Agreement or require performance by opponent of any of the provisions, shall not be construed as a waiver of such provisions or affect the right of claimant to thereafter enforce the provisions of this Agreement. Waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach of the Agreement.

23. Independent Contractor

Contractor acknowledges that it is an independent contractor; that it alone retains control of the manner of conducting its activities in furtherance of this Agreement; that it, as well as any persons or agents as it may employ, are not employees of the Park District; and that neither this Agreement, nor the administration thereof, shall operate to render or deem either Party hereto the agent or employee of the other.

24. Non-Assignment

This Agreement is non-assignable in whole or in part by the Contractor, and any assignment shall be void without prior written consent of the Park District.

25. Subcontracts.

Contractor shall not subcontract this Agreement or any part of this Agreement without the prior written consent of the Park District. Any subcontract that Contractor enters into for the Work shall be in writing and shall specifically provide that the Park District is an intended third-party beneficiary of such subcontract and that the Park District shall have the right to enforce the subcontractor's obligations thereunder after the occurrence of a default under the contract by

the Contractor. By appropriate written agreement, the Contractor shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to the Contractor by the terms of the Contract Documents, including without limitation this Agreement, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Park District.

26. Notices

All notices required or permitted to be given under this Agreement shall be deemed given when such notice is hand delivered; or when such notice is sent by facsimile or e-mail transmission, provided such transmission together with confirmation of such transmission is also sent on the transmission date to the other Party by United States mail, with postage therewith prepaid; or when such notice is deposited in the United States mail, with postage thereon prepaid, addressed to the other party at the following addresses:

If to Park District: Wheaton Park District
 102 E. Wesley Street
 Wheaton, IL 60187
 (Fax) 630-665-5880
 Attention: Executive Director

If to Contractor: Coleen Flood
 Flood's Royal Flush, Inc.
 180 Poplar Place
 North Aurora, IL 60542

27. Entire Agreement; No Amendment

This Agreement contains the entire agreement between the Parties, and no statement, promise or inducement made by either Party to the agency of either Party that is not contained in this written Agreement shall be valid or binding. No modification of this Agreement shall be effective unless in writing dated a date subsequent to the date of this Agreement and signed by an authorized representative of each Party.

28. Headings

The headings for each paragraph of this Agreement are for convenience and reference purposes only and in no way define, limit or describe the scope or intent of said paragraphs or of this Agreement nor in any way affect this Agreement.

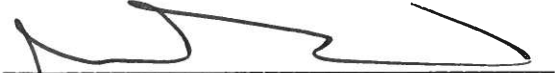
29. Severability

The invalidity of any section, paragraph or subparagraph of this Agreement shall not impair the validity of any other section, paragraph or subparagraph. If any provision of this Agreement is

determined to be unenforceable, such provision shall be deemed severable and the Agreement may be enforced with such provision severed or as modified by such court.
IN WITNESS WHERE OF the Parties hereto have set their respective hands and seals the day and year first above written.

WHEATON PARK DISTRICT

By:



Michael Benard, Executive Director

Attest:

By:

CONTRACTOR

Flood's Royal Flush, Inc.

By:



Coleen Flood, President

Attest:

By:

Exhibit A
Contractor's Proposal Attachment

Exhibit B
Contractor's Compliance and Certifications Attachment

Exhibit C
Insurance Attachment

Contractor shall obtain and maintain at its cost for the Term of this Agreement, insurance of the types and in the amounts listed below.

A. Commercial General and Umbrella Liability Insurance

Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this location.

CGL insurances shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 04 13 or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, products, materials or services supplied by Contractor, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

District, its agents, officers, commissioners, employees and volunteers, and their successor and assigns shall be included as additional insureds under the CGL, using ISO additional insured endorsement CG 20 10 or a substitute providing at least equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to District. If the additional insured have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the Contractor's liability under this insurance policy shall not be reduced by the existence of such other insurance.

There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage

B. Business Auto and Umbrella Liability Insurance

If applicable, Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$2,000,000 each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos.

Business auto insurance shall be written on Insurance Services Office (ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provided contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

C. Workers Compensation Insurance (if applicable)

Contractor shall maintain workers compensation as required by statute and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

If District has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 10 or a substitute endorsement acceptable to District under the Commercial General and Umbrella Liability Insurance required in this Agreement, the Contractor waives all rights against District and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Contractor's Services.

Contractor shall provide a waiver of subrogation on its workers compensation policy in favor of Owner and shall waive any limitation of its or its subcontractors' liability notwithstanding the limitation set forth in *Kotecki v. Cyclops Welding Corp.*, 146 Ill.2d 155 (1991).

D. General Insurance Provisions

1. Evidence of Insurance

Prior to commencing the Services, Contractor shall furnish District with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All certificates shall provide for 30 days' written notice to District prior to the cancellation or material change of any insurance referred to therein. Written notice to District shall be by certified mail, return receipt requested. Failure of District to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of District to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

District shall have the right, but not the obligation, of prohibiting Contractor from commencing the Services until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by District.

Failure to maintain the required insurance may result in termination of this Agreement at District's option.

Contractor shall provide certified copies of all insurance policies required above within ten days of District's written request for said copies.

2. Acceptability of Insurers

For insurance companies which obtain a rating from A. M. Best, the rating should be no less than A VII using the most recent edition of the A. M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the District has the right to reject insurance written by an insurer it deems unacceptable.

3. Cross-Liability Coverage

If Contractor's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

4. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to District. At the option of the District, the Contractor may be asked to eliminate such deductibles or self-insured retentions as respects the District, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

5. Subcontractors

Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified above. When requested by the District, Contractor shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

Exhibit D
Schedule Attachment (Table's 1 & 2)

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