

General Conditions

GENERAL CONDITIONS

Please Read Carefully

These Provisions Are a Part of Your Bid and any Contract Awarded

Scope of Bid/Proposal: Bids/Proposals are hereby requested for **PROJECT TITLE**, as per specifications herein.

The bidder agrees that:

- A. Bidder has carefully examined the specifications, and all provisions relating to the item(s) to be furnished or the work to be done; understands the meaning, intent, and requirements; and
- B. Bidder will enter into a written contract and furnish the item(s) or complete the work in the time specified, and in strict conformity with the District specifications for the prices quoted.

Note: Bidder is defined as any individual, partnership, or corporation submitting a bid, proposal, or quotation in response to a request for bid (RFB), request for proposal (RFP), request for information (RFI) or request for quotation (RFQ). A bidder may also be referred to as a bidder, contractor, supplier or vendor.

The use of the title "Bidder:", "Vendor", "Contractor" or "Consultant" within this solicitation document and any resulting contract shall be deemed interchangeable and shall refer to the person or entity with whom the District is soliciting and/or contracting for the service or product referenced within the bid document.

1. Prices:

All prices and notations must be in ink or typewritten. Mistakes may be crossed out and corrections typed or written with ink adjacent to the error. Bids shall indicate the unit price extended to indicate the total price for each item bid. Any difference between the unit price correctly extended and the total price shown for all items bid shall be resolved in favor of the unit prices. Bidders are encouraged to review all prices prior to bid submittal, as withdrawal or correction may not be permitted after the bid has been opened.

2. Firm Prices:

Prices on bid shall be firm prices not subject to escalation unless otherwise provided for in the specifications. In the event the specifications provide for escalation, the maximum limit shall be shown, or the bid shall not be considered. In the event of a decline in market price below a price bid, the District shall receive the benefit of such decline.

3. Items Offered:

If the item offered by the bidder has a trade name, brand and/or catalog number, such shall be stated in the bid. If the bidder proposes to furnish an item of a manufacturer or vendor other than that mentioned on the face hereof, bidder must specify maker, brand, quality, catalog number, or other trade designation. Unless such is noted on the bid form, it will be deemed that the item offered is that designated even though the bid may state "or equal".

4. Brand Names:

Whenever reference to a specific brand name is made by the District, it is intended to describe a component that has been determined to best meet operational, performance, or reliability standards of the District, thereby incorporating these standards by reference within the specifications. These specifications are not meant to limit the vendor; they are guidelines to minimum qualifications. The bidder shall indicate their compliance or non-compliance for each line of the specification. Any deviations from the specifications or where submitted literature does not fully support the meaning of the specifications must be clearly cited in writing by the bidder. An equivalent ("or equal") may be offered by the bidder, subject to evaluation and acceptance by the District. It is the bidder's responsibility to provide, at bidder's expense, samples, test data, or other documentation the District may require to fully evaluate and determine acceptability of an offered substitute. The District reserves the sole right to reject a substituted component that will not meet or exceed District standards.

5. Samples:

General Conditions

Samples may be required for bid evaluation and testing purposes. Bidders shall agree to provide samples upon request and at no additional cost to the District.

6. Withdrawal of Bids:

Bids may be withdrawn by written or facsimile notice received prior to the exact hour and date specified for receipt of bid. A bid may also be withdrawn in person by a bidder, or bidder's authorized representative, prior to the exact hour and date set for receipt of bids. Telephone withdrawals are not permitted.

7. Late Bids, Modifications, or Withdrawals:

Bids, modifications of bids, or bid withdrawals received after the exact time and date specified for receipt will not be considered.

8. Mistake in Bid:

(a) If the bidder discovers a mistake in bid prior to the hour and date specified for receipt of bid, bidder may correct the mistake by withdrawing the bid in accordance with Item 7 above and resubmit prior to the stated bid deadline.

(b) If within seventy-two hours of the bid closing and prior to the issuance of a purchase order or a contract, the apparent low bidder discovers a mistake in bid of a serious and significant nature, bidder may request consideration be given to withdrawing the bid. The mistake must be evident and provable. The right is reserved by the District to reject any and all requests for withdrawal of bids. The decision of the Trustees is final as regards acceptance or rejection of requests for withdrawal after closing of bids.

(c) A mistake in bid cannot be considered once a purchase order or contract is issued.

9. Signature:

All bids shall be signed and the title and firm name indicated. A bid by a corporation shall be signed by an authorized officer, employee or agent with his or her title.

10. Exceptions:

A bidder deviating from specifications must specify any and all deviation(s). Failure to note said exceptions shall be interpreted to convey that the bidder shall propose to perform in the manner described and/or specified in this bid solicitation. If exception(s) are taken or alternatives offered, complete descriptions must be shown separately.

11. Confidential Information:

Any information deemed confidential or proprietary should be clearly identified by the bidder as such. It may then be protected and treated with confidentiality only to the extent permitted by state law. Otherwise the information shall be considered a public record. Information or data submitted with a bid will not be returned.

12. Quality:

Unless otherwise required in the specifications, all goods furnished shall be new and unused.

13. Litigation Warranty:

The bidder, by bidding, warrants that bidder is not currently involved in litigation or arbitration concerning the materials or bidder's performance concerning the same or similar material or service to be supplied pursuant to this contract of specification, and that no judgments or awards have been made against bidder on the basis of bidder's performance in supplying or installing the same or similar material or service, unless such fact is disclosed to the District in the bid. Disclosure may not disqualify the bidder. The District reserves the right to evaluate bids on the basis of the facts surrounding such litigation or arbitration and to require bidder to furnish the District with a surety bond executed by a surety company authorized to do business in the State of Nevada and approved by The District in a sum equal to one hundred percent (100%) of the contract price conditional on the faithful performance by bidder of the contract in the event the bid is awarded to bidder, notwithstanding the litigation or arbitration.

General Conditions

14. Royalties, Licenses and Patents:

Unless otherwise specified, the bidder shall pay all royalties, license and patent fees. The bidder warrants that the materials to be supplied do not infringe any patent, trademark or copyright and further agrees to defend any and all suits, actions and claims for infringement that are brought against the District, and to defend, indemnify and hold harmless the District from all loss or damages, whether general, exemplary or punitive, as a result of any actual or claimed infringement asserted against the District, the bidder or those furnishing material to bidder pursuant to this contract.

15. Performance Standards:

Performance of work and acceptability of equipment or materials supplied pursuant to any contract or award shall be to the satisfaction and full discretion of the District.

16. Americans with Disabilities Act (ADA) Standards:

Bidders shall be required to comply with current ADA Standards in preparing their bids and executing work required under any contract resulting from this bid. Completed work must comply with current ADA Standards.

17. Warranties:

(a) Unless otherwise specified, all workmanship, material, labor or equipment provided under the contract shall be warranted by bidder and/or manufacturer for a minimum of twelve (12) months after acceptance by District. Greater warranty protection will be accepted. Lesser warranty protection must be indicated by bidder on the bid proposal as an exception.

(b) Bidder shall be considered primarily responsible to the District for all warranty service, parts and labor applicable to the goods or equipment provided by bidder under this bid or award, irrespective of whether bidder is an agent, broker, fabricator or manufacturer's dealer. Bidder shall be responsible for ensuring that warranty work is performed at a local agency or facility convenient to District and that services, parts and labor are available and provided to meet District's schedules and deadlines. If required and defined within the Scope of Work, the Bidder will post a performance bond after contract award to guarantee performance of these obligations. Bidder may establish a service contract with a local agency satisfactory to District to meet this obligation if bidder does not ordinarily provide warranty service.

18. Addenda:

The effect of all addenda to the bid documents shall be considered in the bid, and said addenda shall be made part of the bid documents and shall be returned with them. Before submitting a bid, each bidder shall ascertain whether or not any addenda have been issued, and failure to acknowledge any such addenda may render the bid invalid and result in its rejection.

19. Specifications to Prevail:

The detailed requirements of the Specifications, Scope of Work or Special Conditions shall supersede any conflicting reference in these General Conditions or the stated language on the District Standard Purchase Order that are in conflict therewith.

20. Taxes:

The District is exempt from State, City and County Sales Taxes per NRS 372.325. The District will furnish Exemption Certificates for Federal Excise Tax when applicable.

21. Prevailing Wages:

Bidder is responsible for complying with all applicable local, State and Federal wage laws, whether or not specifically cited in this bid document.

General Conditions

Per NRS Sections 338.020 through 338.090, certain projects defined as “public works” require the payment of the prevailing wage as determined by the Labor Commissioner. Generally speaking, projects/contracts for construction of a public work valued at less than \$100,000 are exempt from the prevailing wage requirement (NRS 338.080). Bidder shall be fully aware of the prevailing wage requirements of the State of Nevada as detailed in NRS Chapter 338 and price their bid response accordingly. Further information concerning Prevailing Wage rates can be found at:

<http://www.laborcommissioner.com/pwpw.html>

Federal “Davis Bacon” wages may be applicable if the funding for the project includes Federal funds. These requirements are detailed in the “Special Conditions – Federal Requirements” section that will be included in this bid document when such conditions apply.

22. Conflict of Interest:

No District employee or elected or appointed member of District government, or member of the employee’s immediate family, may participate directly or indirectly in the procurement process pertaining to this bid if they:

- (a) Have a financial interest or other personal interest that is incompatible with the proper discharge of their official duties in the public interest or would tend to impair their independence, judgment or action in the performance of their official duties.
- (b) Are negotiating for or have an arrangement concerning prospective employment with bidder. The bidder warrants to the best of his knowledge that the submission of the bid will not create such conflict of interest. In the event such a conflict occurs, the bidder is to report it immediately to the District. For breach or violation of this warranty, the District shall have the right to annul this contract without liability at its discretion, and bidder may be subject to damages and/or debarment or suspension.

23. Disqualification of Bidder:

Any one or more of the following may be considered as sufficient for the disqualification of a prospective Bidder and the rejection of the Bid:

- (a) The Bidder is not responsive or responsible.
- (b) The quality of services, materials, equipment or labor offered does not conform to the approved plans and specifications.
- (c) There is evidence of collusion among prospective Bidders (Participants in such collusion will receive no recognition as Bidders).
- (d) The Bidder lacks the correct contractor’s license classification required for the defined scope of work.
- (e) Lack of competency, understanding of the scope of work, adequate machinery, plant and/or equipment as revealed in routine due diligence associated with bid evaluation.
- (f) Unsatisfactory performance record as shown by past work for the District, judged from the standpoint of workmanship, progress, and quality of services/goods provided.
- (g) Uncompleted work which, in the judgment of the District, might hinder or prevent the prompt completion of additional work, if awarded.
- (h) Failure to pay or satisfactorily settle all bills due for labor and/or material on any contract(s).
- (i) Failure to comply with any requirements of the District.
- (j) Failure to list, as required, all subcontractors who will be employed by the Bidder.
- (k) Any other reason determined, in good faith, to be in the best interest of the District.

24. Gratuities:

The District may rescind the right of the bidder to proceed under this agreement if it is found that gratuities in the form of entertainment, gifts, cash or otherwise are offered or given by the bidder, or any agent or representative of the bidder, to any officer or employee of the District with the intent of influencing award of this agreement or securing favorable treatment with respect to performance of this agreement.

25. Bidder’s Security (This Section IS IS NOT Applicable to this bid):

General Conditions

A bid deposit in an amount equal to at least 5% of the bid may be required as a bid security by the District. The bid security may only be in cash, a cashier's or certified check made payable to the District, or a bid bond. If the bid security is a bond, it shall be executed by a surety insurer authorized to issue surety bonds in the State of Nevada. All Bonding Companies must have an "A" rating or better with Moody's or A.M. Best Company, and be included on the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bond and as Acceptable Reinsuring Companies" as published in circular 570 (as amended) by the audit staff, Bureau of Accounts, U.S. Treasury Department. (In other words, the company is T-listed.) The bid security must be executed by the bidder and enclosed with the bid proposal in the sealed bid envelope.

26. Performance and Payment Bonds:

Per NRS 339.025, before any contract, except one subject to the provisions of chapter 408 of NRS, exceeding \$100,000 for any project for the new construction, repair or reconstruction of any public building or other public work or public improvement of any contracting body is awarded to any contractor, he shall furnish to the contracting body the following bonds which become binding upon the award of the contract to the contractor (All Bonding Companies must have an "A" rating or better with Moody's or A.M. Best Company, and be included on the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bond and as Acceptable Reinsuring Companies" as published in circular 570 (as amended) by the audit staff, Bureau of Accounts, U.S. Treasury Department. (In other words, the company is T-listed.):

Performance Bond (This Section IS IS NOT Applicable to this bid):

The Contractor awarded this bid will be required to furnish the District with a surety bond conditioned upon the faithful performance of the contract. This may take the form of a bond executed by a surety company authorized to do business in the State of Nevada and approved by the District. The bond shall be in a sum equal to one hundred percent (100%) of the amount of the contract price. Such bond shall be forfeited to the District in the event that bidder receiving the contract shall fail or refuse to fulfill the requirements and all terms and conditions of the contract.

Payment Bond (This Section IS IS NOT Applicable to this bid):

The Contractor awarded this bid will be required to furnish the District with a payment bond. This may take the form of a bond executed by a surety company authorized to do business in the State of Nevada and approved by the District. The bond shall be in a sum equal to one hundred percent (100%) of the amount of the contract price. The bond must be solely for the protection of claimants supplying labor or materials to the contractor to whom the contract was awarded, or to any of his subcontractors, in the prosecution of the work provided for in such contract.

27. Indemnification:

Upon award, Contractor agrees to hold harmless, indemnify, and defend District, its officers, agents, employees, and volunteers from any loss or liability, financial or otherwise resulting from any and all claims, demands, suits, actions, or causes of action, caused by any action, either direct or passive, the omission, failure to act, or negligence on the part of Contractor, its employees, agents, representatives, or Subcontractors arising out of the performance of work under this Agreement by Contractor, or by others under the direction or supervision of Contractor.

If District's personnel are involved in defending such actions, Contractor shall reimburse District for the time and costs spent by such personnel at the rate charged District for such services by private professionals.

In determining the nature of the claim against District, the incident underlying the claim shall determine the nature of the claim, notwithstanding the form of the allegations against District.

General Conditions

Nothing in this contract shall be interpreted to waive nor does the District, by entering into this contract, waive any of the provisions found in Chapter 41 of the Nevada Revised Statutes.

28. Insurance:

BIDDERS' ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW. IT IS HIGHLY RECOMMENDED THAT BIDDERS CONFER WITH THEIR RESPECTIVE INSURANCE CARRIERS OR BROKERS TO DETERMINE IN ADVANCE OF BID SUBMISSION THE AVAILABILITY OF INSURANCE CERTIFICATES AND ENDORSEMENTS AS PRESCRIBED AND PROVIDED HEREIN. IF THE APPARENT LOW BIDDER FAILS TO COMPLY STRICTLY WITH THE INSURANCE REQUIREMENTS, THAT BIDDER MAY BE DISQUALIFIED FROM AWARD OF THE CONTRACT.

Should work be required on District premises or within the public right-of-way, upon award of the contract, the bidder shall provide proof of Commercial General Liability Insurance and Automobile Liability, Professional Liability and Workers' Compensation if applicable, prior to initiation of any services under District Bid, Proposal or Contract. Coverage shall be from a company authorized to transact business in the State of Nevada and the District and shall meet the following minimum specifications:

INDUSTRIAL INSURANCE

It is understood and agreed that there shall be no Industrial Insurance coverage provided for Contractor or any Sub-Contractor of the Contractor by the District. Contractor agrees, as a precondition to the performance of any work under this Agreement and as a precondition to any obligation of the District to make any payment under this Agreement to provide District with a certificate issued by an insurer in accordance with NRS 616B.627 and with a certificate of an insurer showing coverage pursuant to NRS 617.210.

It is further understood and agreed by and between District and Contractor that Contractor shall procure, pay for, and maintain the above mentioned industrial insurance coverage at Contractor's sole cost and expense.

Should Contractor be self-funded for Industrial Insurance, Contractor shall so notify District in writing prior to the signing of this Contract. District reserves the right to approve said retentions, and may request additional documentation, financial or otherwise, for review prior to the signing of this Contract.

MINIMUM LIMITS OF INSURANCE

CONTRACTOR shall maintain coverages and limits no less than:

1. General Liability: \$1,000,000 (or amount customarily carried by Contractor, whichever is greater) combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, the general aggregate limit shall be increased to equal twice the required occurrence limit or revised to apply separately to this project or location.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. No aggregate limit may apply.
3. Contractor Errors and Omissions Liability: \$1,000,000 per claim and as an annual aggregate. Premium costs incurred to increase Contractor's insurance levels to meet minimum contract limits shall be borne by the Contractor at no cost to the District.
4. Workers' Compensation: Contractor shall provide proof of worker's compensation insurance as required by NRS 616B.627 or proof that compliance with the provisions of Nevada Revised Statutes, Chapters 616A-D and all other related chapters is not required.

General Conditions

Contractor will maintain Contractor liability insurance during the term of this Agreement and for a period of three (3) years from the date of substantial completion of the project. In the event that Contractor goes out of business during the term of this Agreement or the three (3) year period described above, Contractor shall purchase Extended Reporting Coverage for claims arising out of Contractor's negligent acts, errors and omissions committed during the term of the Contractor Liability Policy.

Should District and Contractor agree that higher Contractor Coverage limits are needed warranting a project policy, project coverage shall be purchased and the premium for limits exceeding the above amount shall be borne by District. District retains the option to purchase project insurance through Contractor's insurer or its own source.

OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages

- a. District, its officers, agents, employees, and volunteers are to be included as insureds as respects damages and defense arising from: activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor; products and completed operations of Contractor; premises owned, occupied, or used by Contractor; or automobiles owned, leased, hired, or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to District, its officers, employees, or volunteers.
- b. Contractor's insurance coverage shall be Primary insurance with respect to the District, its officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by District, its officers, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it in any way.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to District, its officers, agents, employees, or volunteers.
- d. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Property Coverages (If Applicable)

Contractor shall provide builders risk insurance on an "All Risk" basis on a policy form satisfactory to District. The limit of coverage will be the amount necessary to cover the bid value of any structures in the Contract or other value determined by District. District reserves the right to require Contractor to provide boiler and machinery insurance coverage or other forms of property insurance. If the project is in a flood plain, District reserves the right to require flood coverage at Contractor's expense. Losses paid under the property insurance policy or policies shall be paid directly to District by the insurer(s).

3. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, or non-renewed by either Contractor or by the insurer, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to District except for nonpayment of premium.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a Best's rating of no less than A-: VII. District, with the approval of the Risk Manager, may accept coverage with carriers having lower Best's ratings upon review of financial information concerning Contractor and insurance carrier. District reserves the right to require that Contractor's

General Conditions

insurer be a licensed and admitted insurer in the State of Nevada, or on the Insurance Commissioner's approved but not admitted list.

VERIFICATION OF COVERAGE

Contractor shall furnish District with certificates of insurance and with original endorsements affecting coverage required by this contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Prior to the start of any Work, Contractor must provide the following documents to District, P.O. Box 10426, Zephyr Cove, NV 89448-2426:

- A. **Certificate of Insurance.** Contractor must provide a Certificate of Insurance form to the District to evidence the insurance policies and coverage required of Contractor.
- B. **Additional Insured Endorsements.** An original Additional Insured Endorsement, signed by an authorized insurance company representative, must be submitted to the District, by attachment to the Certificate of Insurance, to evidence the endorsement of the District as additional insured.
- C. **Policy Cancellation Endorsement.** Except for ten days notice for non-payment of premium, each insurance policy shall be endorsed to specify that without thirty (30) days prior written notice to the District, the policy shall not be cancelled, non-renewal or coverage and/or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mailed to the address specified above. A copy of this signed endorsement must be attached to the Certificate of Insurance.
- D. **Bonds (as Applicable).** Bonds as required and/or defined in the original bid documents.

All certificates and endorsements are to be addressed to the Cave Rock Estates General Improvement District, and be received and approved by District before work commences. The District reserves the right to require complete certified copies of all required insurance policies at any time.

SUBCONTRACTORS

Contractor shall include all Subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to all of the requirements stated herein.

MISCELLANEOUS CONDITIONS

1. Contractor shall be responsible for and remedy all damage or loss to any property, including property of District, caused in whole or in part by Contractor, any Subcontractor, or anyone employed, directed, or supervised by Contractor.
2. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payment of damages to persons or property resulting from its operations or the operations of any Subcontractors under it.
3. In addition to any other remedies District may have if Contractor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, District may, at its sole option:
 - a. Purchase such insurance to cover any risk for which District may be liable through the operations of Contractor under this Agreement and deduct or retain the amount of the premiums for such insurance from any sums due under the Agreement;

General Conditions

- b. Order Contractor to stop work under this Agreement and/or withhold any payments which become due Contractor here under until Contractor demonstrates compliance with the requirements hereof; or,
- c. Terminate the Agreement.

29. Safety Program:

Upon award, the Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work. The Contractor shall take all necessary precautions for the safety of, and shall provide all necessary protection to prevent damage, injury, or loss to:

1. All employees on the work site and all other persons who may be affected thereby.
2. All the work, materials, and equipment to be incorporated therein, whether in storage on or off the site.
3. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

Contractor shall comply with all applicable laws, ordinances, rules, regulations, and others of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss. He shall erect and maintain, as required by existing conditions and progress on the work, all necessary safeguards for safety and protection, including posting danger signs, other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent utilities. Contractor shall comply with OSHA'S Hazard Communication Standards.

Contractor shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to the Owner and the Engineer.

30. Award of Contract:

- (a) Bids/Proposals will be analyzed and award will be made to the lowest, responsive and responsible bidder whose bid conforms to the solicitation and whose bid is considered to be most advantageous to the District, price and other factors considered. Factors to be considered may include, but are not limited to: bidder's past performance, total unit cost, economic cost analysis, life cycle costs, warranty and quality, maintenance cost, durability, the operational requirements of the District and any other factors which will result in the optimum economic benefit to the District.
- (b) The District reserves the right to reject any item or items, to waive informalities, technical defects and minor irregularities in bids/proposals received; and to select the bid(s) or proposal(s) deemed most advantageous to the District. Should the District elect to waive a right it will not constitute an automatic waiver of that right in the future nor will it impact any other right or remedy. The District may consider bids/proposals submitted on an "all or nothing" basis if the bid/proposal is clearly designated as such.
- (c) The District reserves the right to award one or more contracts on the bids/proposals submitted, either by award of all items to one bidder or by award of separate items or groups of items to various bidders as the interests of the District may require, unless the bidder clearly specifies otherwise in his bid.
- (d) Upon acceptance by the District, the solicitation, bid, proposal, or price quotation and issuance of a purchase order issued to the successful bidder shall be deemed to result in a binding contract incorporating those terms and these General Conditions without further action required by either party. Items are to be furnished as described in the bid and in strict conformity with all instructions, conditions, specifications, and provisions in the complete contract, as defined by this clause or any related integrated agreement.

31. Request for Proposal (RFP) Submittals:

In the case of Request for Proposals (RFP's), it should be noted that the documents submitted by prospective bidders are competitive sealed proposals and not competitive sealed bids. When proposals are opened, prices

General Conditions

and other information will not be made public until the proposal is awarded. There shall be no disclosure of any bidder's information to competing bidders prior to the award of the proposal.

By their nature, proposals will include a number of variables that will vary based on the complexity of the product or service addressed within the proposal. Therefore, the evaluation of RFP's and the recommendation for award will not be based on price alone. Selection criteria will be better defined for each scope of work in the Special Conditions section of this bid.

Upon award of the contract, the executed contract and proposals will become public information. Accordingly, each proposal should be submitted on the vendor's most favorable terms from a price and technical standpoint.

32. Bidder Preference Law (This Section IS IS NOT Applicable to this bid):

This project will be bid and awarded under the Provisions(s) of NRS 338.147, which restricts preference given to certain contractors on Public Works Projects. The NRS cited in this section is meant to be a reference only. Each bidder shall acquaint himself with the latest provisions of NRS 338.147.

If the Contract for any Public Works Construction Project is expected to cost \$250,000 or more, then all Contractors must be able to submit upon request, a copy of their Certificate of Bidder Preference issued by the State Contractor's Board to be eligible for bidder preference (Call 775-688-1141 or 775-486-1100 to obtain certification information from the State Contractors Board).

This section shall not be applicable for projects in which some or all of the funding comes from Federal sources.

33. Tie Bids:

Should identical low, responsive and responsible bids be received from two or more bidders, the District shall notify all parties involved in the tie and may at his option, exercise one of the following tie breaking methods unless another alternative is apparent and prudent:

- a) Tie Bid (two vendors): The Cave Rock Estates General Improvement District, with a witness present, may flip a coin with heads representing the bidder whose tie bid was first received by the District. If the toss is heads, the recommendation will be to this bidder; if tails, the recommendation will be made in favor of the second tied bidder.
- b) Tie Bid (two or more vendors): Should there be two or more low, responsive and responsible tie bids where representatives of the bidders wish to participate in the tie breaking process, the Cave Rock Estates General Improvement District shall set a mutually agreed upon time where, in his office, he shall shuffle a new deck of playing cards and have each bidder's representative cut the cards. The tie bidder who cuts the highest card (with Ace high) shall be recommended for bid award.

34. Appeals/Protests:

A person who submits a bid on a contract may, after the bids are opened and within 5 business days, unless otherwise stated in the Special Conditions, file a notice of protest regarding the awarding of the contract.

- (a) A notice of protest must include a written statement setting forth with specificity the reasons the person filing the notice believes the applicable provisions of law were violated.
- (b) A person filing a notice of protest may be required by the governing body or its authorized representative, at the time the notice of protest is filed, to post a bond with a good and solvent surety authorized to do business in this State or submit other security, in a form approved by the governing body or its authorized representative, to the governing body or its authorized representative who shall hold the bond or other security until a determination is made on the protest. A bond posted or other security submitted with a notice of protest must be in an amount equal to the lesser of:

General Conditions

- (1) Twenty-five percent of the total value of the bid submitted by the person filing the notice of protest;
or
- (2) Two hundred fifty thousand dollars (\$250,000).
- (c) A notice of protest filed in accordance with the provisions of this section operates as a stay of action in relation to the awarding of any contract until a determination is made by the governing body or its authorized representative on the protest.
- (d) A person who submits an unsuccessful bid may not seek any type of judicial intervention until the governing body or its authorized representative has made a determination on the protest and awarded the contract.
- (e) A governing body or its authorized representative is not liable for any costs, expenses, attorney's fees, loss of income or other damages sustained by a person who submits a bid, whether or not the person files a notice of protest pursuant to this section.
- (f) If the protest is upheld, the bond posted or other security submitted with the notice of protest must be returned to the person who posted the bond or submitted the security. If the protest is rejected, a claim may be made against the bond or other security by the governing body or its authorized representative in an amount equal to the expenses incurred by the governing body or its authorized representative because of the unsuccessful protest. Any money remaining after the claim has been satisfied must be returned to the person who posted the bond or submitted the security.

35. Documentation:

Due to the time constraints that affect contract performance, all required documents, certificates of insurance and bonds shall be provided to the District within ten (10) calendar days following award or date of request by District, whichever is later. Any failure to comply may result in bid being declared non-responsive and rejected, and at District's option, the bid bond may be attached for damages suffered.

36. Discounts:

- (a) Prompt payment discounts will not be considered in evaluating bids for award. However, offered discounts will be taken if payment is made within the discount period, even though not considered in the evaluation of bids.
- (b) In connection with any discount offered, time will be computed from date of delivery and acceptance, or invoice receipt, whichever is later. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the District check.
- (c) Any discount offered other than for prompt payment should be included in the net price quoted and not included in separate terms. In the event this is not done, the District reserves the right to accept the discount offered and adjust prices accordingly on the Purchase Order.

37. Seller's Invoice:

Invoices shall be prepared and submitted in duplicate to the address shown on the Purchase Order. Separate invoices are required for each Purchase Order. Invoices shall contain the following information: Purchase Order number, item number, description of supplies or services, sizes, unit of measure, quantity, unit price and extended totals.

38. Inspection and Acceptance:

Inspection and acceptance will be at destination unless specified otherwise, and will be made by the District department shown in the shipping address or other duly authorized representative of the District. Until delivery and acceptance, and after any rejection, risk of loss will be on the bidder unless loss results from negligence of the District.

39. Lost and Damaged Shipments:

Risk of loss or damage to items prior to the time of their receipt and acceptance by the District is upon the bidder. The District has no obligation to accept damaged shipments and reserves the right to return at the

General Conditions

bidder's expense damaged merchandise even though the damage was not apparent or discovered until after receipt of the items.

40. Late Shipments:

Bidder is responsible to notify the District representative receiving the items of any late or delayed shipments. The District reserves the right to cancel all or any part of an order if the shipment is not made as promised.

41. Document Ownership:

All technical documents and records originated or prepared pursuant to this contract, including papers, reports, charts, and computer programs, shall be delivered to and become the exclusive property of the District and may be copyrighted by the District. Bidder assigns all copyrights to District by undertaking this agreement.

42. Advertisements, Product Endorsements:

District employees and agencies or organizations funded by the District are prohibited from making endorsements, either implied or direct, of commercial products or services without written approval of the District. No bidder may represent that the District has endorsed their product or service without prior written approval.

43. Optional Cooperative Purchase Agreement

It is intended that any other public agency (i.e., city, county, district, public agency, municipality or state agency) shall have the option to participate (A.K.A. "join" or "piggyback") in any award made as a result of this solicitation. The District shall incur no financial responsibility in connection with purchase orders or contracts made by the bidder with another public agency resulting from this solicitation. The public agency utilizing the original contract shall accept sole responsibility for placing orders and making applicable payments to the vendor. Should the Bidder not wish for a contract resulting from this bid to be used by other public agencies, they have the option to decline that option at the time of request.

44. Vendor Workplace Policies

No Vendor providing a service, program or activity to the public on behalf of the District shall discriminate against any person because of sex, race, color, creed, national origin or disability. Vendor, if providing a service, program or activity to the public on behalf of the District, shall comply with the Americans with Disability Act and District's policies pursuant thereto when providing said service, program or activity.

The District is an Affirmative Action/Equal Opportunity Employer. Bidders shall be cognizant of the requirements for compliance with Executive Order 11246, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in regulations of the U.S. Department of Labor (41 CFR part 60).

45. Business License Requirement:

The District is located in Douglas County, Nevada. Neither Douglas County nor the District requires a business license.

46. District Provisions to Prevail:

Except as indicated in the specifications, the District's standard General Conditions shall govern any contract award. Any standard terms and conditions of bidder submitted by bidder shall not be acceptable to District unless expressly agreed to by the District. The District reserves the right to reject bidder's bid as non-responsive, to consider the bid without bidder's standard terms and conditions, or to require bidder to delete reference to such, as a condition of evaluation or award of the bid. If, after award of contract, bidder (contract vendor) provides materials or services accompanied by new or additional standard terms or conditions, they too shall be considered void and District may require deletion as a further condition of performance by vendor.

General Conditions

47. Invalid Provisions:

In the event that any one or more of the provisions of this agreement shall be found to be invalid, illegal or unenforceable, the remaining provisions shall remain in effect and be enforceable.

48. Amendments and Modifications:

The District may at any time, by written order, and without notice to the sureties, make a modification to the contract or an amendment to the Purchase Order, within the general scope of this contract, in (1) quantity of materials or service, whether more or less; (2) drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the District; (3) method of shipment or packing; and (4) place of delivery. If any such change causes an increase or decrease in the cost or the time required for the performance of this contract, an equitable adjustment shall be made by written modification of the contract or amendment to the Purchase Order. Any claim by the bidder for adjustment under this clause must be asserted within 30 calendar days from the notification date.

49. Assignment:

Vendor shall not assign or delegate duties or responsibilities under this agreement, in whole or in part, without prior written approval of the District.

50. Disputes After Award:

Except as otherwise provided in these provisions, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Trustees, who shall reduce this decision to writing and mail a copy to the bidder. The decision of the Trustees shall be final and conclusive, unless bidder requests arbitration within ten (10) calendar days. Pending final decision of a dispute, the bidder shall proceed diligently with the performance of the contract and in accordance with the Trustee's decision.

51. Arbitration after Award:

Any and all disputes, controversies or claims arising under or in connection with the contract resulting from this bid, including without limitation, fraud in the inducement of this Contract, or the general validity or enforceability of this Contract, shall be governed by the laws of the State of Nevada without giving effect to conflicts of law principles, may be submitted to binding arbitration before one arbitrator, and shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association in a private manner in Washoe County, Nevada. This award shall be final and judgment may be entered upon it in any court having jurisdiction thereof. In reaching this final award, the arbitrator shall have no authority to change or modify any provision of this Contract. All other expenses of arbitration shall be borne equally by the parties. All fees, including legal fees, shall be borne by the party who incurred them. All costs of enforcement shall be borne by the losing party. Each party shall have the right to discovery in accordance with the Nevada Rules of Civil Procedure.

52. Lawful Performance:

Vendor shall abide by all Federal, State and Local Laws, Ordinances, Regulations, and Statutes as may be related to the performance of duties under this agreement. In addition, all applicable permits and licenses required shall be obtained by the vendor, at vendor's sole expense.

53. Annual Appropriation of Funds:

Multi-year term supply and service contracts and leases are subject to annual appropriation of funds by the District Council. The District plans and makes appropriations to the District Budget with respect to a fiscal year that starts July 1st and ends June 30th of each year. Payments made under term contracts and leases are considered items of current expense. Purchase Orders are funded when issued; therefore, they are current expense items and are not subject to any subsequent appropriation of funds.

Continuance of a multi-year contract beyond the limits of funds available shall be contingent upon appropriation of the requisite funds in the ensuing fiscal year and the termination of this contract due to lack of appropriation shall be without penalty.

General Conditions

54. Extension:

When in the District's best interest, this agreement may be extended on a daily, month-to-month, or annual basis by mutual agreement of both parties. Services and/or materials received under an extension shall be in accordance with pricing, terms, and conditions, as described herein.

55. Termination:

The District may terminate this agreement and be relieved of any consideration to the vendor should vendor fail to perform in the manner required. Furthermore, the District may terminate this agreement for any reason without penalty upon giving thirty (30) days written notice to the vendor. In the event of termination, the full extent of District liability shall be limited to an equitable adjustment and payment for materials and/or services authorized by and received to the satisfaction of the District prior to termination.

56. Venue:

This agreement shall be governed by and interpreted according to the laws of the State of Nevada, and venue for any proceeding shall be in Douglas County.