

CONTRACT DOCUMENTS

**CITY OF LINCOLN
NEBRASKA**

FOR

**THE ANNUAL REQUIREMENTS FOR KENNELING SERVICES
REQUEST FOR PROPOSALS
SPECIFICATION 08-005**

**Contractor:
CAPITAL HUMANE SOCIETY
2320 PARK BLVD.
LINCOLN, NE 68502**

**CITY OF LINCOLN, NEBRASKA
CONTRACT AGREEMENT**

THIS CONTRACT, made and entered into this ____ day of _____ 2008, by and between **Capital Humane Society**, hereinafter called Contractor, and the City of Lincoln, Nebraska, a municipal corporation, hereinafter called the City.

WITNESS, that:

WHEREAS, the City has caused to be prepared, in accordance with law, specifications, plans, and other contract documents for the duties required within the Annual Requirement for Kenneling Services, Spec. 08-005, hereinafter referred to as Work, and has approved and adopted said documents and has caused to be published an advertisement for and in connection with said Work,

WHEREAS, the Contractor, in response to such advertisement, has submitted to the City, in the manner and at the time specified, a sealed Proposal in accordance with the terms of said advertisement; and,

WHEREAS, the City, in the manner prescribed by law has publicly opened, read aloud, examined, and canvassed the Proposals submitted in response to such advertisement, and as a result of such canvass has determined and declared the Contractor to be the lowest responsible bidder for the said Work for the sum or sums named in the Contractor's Proposal, a copy thereof being attached to and made a part of this Contract, except as amended by and through negotiations of parties;

NOW, THEREFORE, in consideration of the sums to be paid to the Contractor and the agreements herein contained; the Contractor and the City hereby agree as follows:

The Contractor agrees to (a) furnish all tools, equipment, supplies, superintendence, and other accessories, services, and facilities; (b) furnish all materials, supplies, and equipment; (c) provide and perform all necessary labor in a substantial and workmanlike manner and in accordance with the provisions of this Contract; and (d) execute and compete all Work included in and covered by the City's award of this Contract to the Contractor, such award being based on the acceptance by the City of the Contractor's proposal, or part thereof, as follows:

I. Contract Period and Compensation.

The term of this Contract shall be for a period of four (4) years, commencing on September 1, 2008 and end on August 31, 2012. The City agrees to pay to the Contractor for the performance of the Work embraced in this Contract, the Contractor agrees to accept as full compensation therefor, the following sums and prices for all Work covered by and included in the Contract award and designated above, payment thereof to be made in the manner provided by the City:

Year 1, 2008-2009:	\$390,000
Year 2, 2009-2010:	\$420,000
Year 3, 2010-2011:	\$450,000
Year 4, 2011-2012:	\$480,000

Payment is to be made in twelve monthly payments not to exceed the agreed upon compensation per contract year. Payment shall be due and owing on or before the 5th day of each month following completion of services. (Ex. For the month of September 2008, the payment for services shall be due on or before October 5, 2008.)

II. Option of Renewal and Compensation.

The parties have agreed that they may mutually agree to renew the Contract for an additional

period of four (4) years. If the parties elect to renew the Contract, the City agrees to pay to the Contractor for the performance of the Work embraced in this Contract, the Contractor agrees to accept as full compensation therefor, the following sums and prices for all Work covered by and included in the Contract award and designated above, payment thereof to be made in the manner provided by the City:

Renewal Year 1, 2012-2013:	\$494,400
Renewal Year 2, 2013-2014:	\$509,232
Renewal Year 3, 2014-2015:	\$524,509
Renewal Year 4, 2015-2016:	\$540,244

The above provided payment terms shall remain the same, unless a change is mutually agreed upon by the parties.

III. Terms and Conditions.

The terms and conditions of this Contract are contained within this document and the following attached documents (Contract Documents) are hereby incorporated by reference and are as fully a part of the contract agreement as if the terms and conditions were herein repeated:

1. The Instructions to Proposers

- a. Instruction section 12.1 shall be deleted and replaced with the following language:
To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless the City, its officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of this Contract, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the intentional or negligent act or omission of Contractor, or anyone for whose acts any of them may be liable.

To the fullest extent permitted by law, City shall indemnify, defend and hold harmless the Contractor, its officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of this Contract, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the intentional or negligent act or omission of City, or anyone for whose acts any of them may be liable. The City does not waive its governmental immunity by entering into this Contract and fully retains all immunities and defenses provided by law.

This subsection survives any termination of this Contract.

2. The Specifications

- a. Specification section 2.8 shall be deleted from the terms and conditions of this Contract by mutual agreement of the parties as it is not included within the negotiated compensation amount, as provided above.
- b. Specification sections 3.2 and 3.3 shall be deleted from the terms and conditions of this Contract by mutual agreement of the parties as the parties have negotiated a flat rate of compensation and payment schedule as reflected in the negotiated compensation amount, as provided above.
- c. Specification section 7.1 shall be amended to designate the City of Lincoln's

Director of Finance, or his/her designee from the Finance Department's budget and/or accounting division, as the official person with authority to conduct any audit of the Contractor; and

3. The Insurance Requirements; and
4. The Contractors Response to Proposal:
 - a. Proposed flat rate and per animal amounts shall be deleted from the terms and conditions of this Contract by mutual agreement of the parties as the parties have negotiated a flat rate of compensation as reflected in the negotiated compensation amount, as provided above.
 - b. Proposed new auditor, as referenced in the handwritten note, shall be deleted from the terms and conditions of this Contract by mutual agreement of the parties as the parties have negotiated a new designee, as provided above.

The Contractor and the City hereby agree that all the terms and conditions of this Contract shall be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IV. Integration, Amendments, Assignment.

The Contract Documents represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Contract. This Contract may be amended only by written agreement of both parties. This Contract may not be assigned without the prior written consent of the other party.

V. Severability & Savings Clause.

Each section and each subdivision of a section of this Contract is hereby declared to be independent of every other section or subdivision of a section so far as inducement for the acceptance of this Contract and invalidity of any section or subdivision of a section of this Contract shall not invalidate any other section or subdivision of a section thereof.

VI. Capacity.

The undersigned person representing the City and Contractor do hereby agree and represent that he or she is legally capable to sign this Contract and to lawfully bind the respective party to this Contract.

IN WITNESS WHEREOF, the Contractor and the City do hereby execute this Contract.

EXECUTION BY THE CITY OF LINCOLN, NEBRASKA

ATTEST:

CITY OF LINCOLN, NEBRASKA

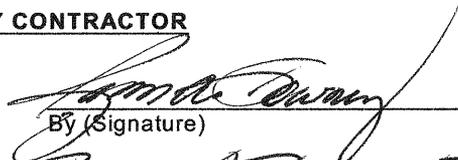
City Clerk

Mayor

Approved by Resolution No. _____
dated _____

EXECUTION BY CONTRACTOR

Capital Humane Society
Name of Corporation


By (Signature)

Type of Organization

ROBERT A. DOWNEY, EXEC. DIR.
Printed Name & Title

2320 Park Blvd., Lincoln, NE 68502
(Address)

MARCH 11, 2008
Date

**PROPOSAL
SPECIFICATION NO. 08-005
PROPOSAL OPENING TIME: 12:00 NOON
DATE: Wednesday, January 23, 2007**

The undersigned, having full knowledge of the requirements of the City of Lincoln for the below listed phases and the contract documents (which include Notice, Instructions, this Proposal, Specifications, Contract, and any and all addenda which are issued electronically via the E-bid system) and all other conditions of the Proposal, agrees to enter into a contract with the City the below listed fees for the performance of this Specification, complete in every respect, in strict accordance with the contract documents at and for fees listed below.

ADDENDA RECEIPT: The receipt of addenda to the specification numbers _____ through _____ are hereby acknowledged. Failure of any submitter to receive any addendum or interpretation of the specifications shall not relieve the submitter from any obligations specified in the request. All addenda shall become part of the final contract document.

<u>Item</u>	<u>Description</u>	<u>Estimate</u>	<u>Per animal cost per day</u>
1.	One (1) year of Kenneling Service as described in specification.	4,000 Various animals	\$ <u>45⁰⁰</u>

Location where services are performed: CAPITAL HUMANE SOCIETY, LINCOLN, NEBR.

NO BID/PROPOSAL SECURITY REQUIRED

NOTE: DOES NOT INCLUDE 2.8 THE COST WILL RANGE FROM \$35.00 TO \$100.00 PER ANIMAL

TERM OF AGREEMENT is four (4) years beginning September 1, 2008 and ending August 31, 2012 with option to renew for an additional mutually agreeable four (4) year periods.

Contract Extension Renewal is an option: Yes No

NOTE: BIDDER IS WILLING TO OFFER AN ANNUAL FEE BID OF \$440,000.00 WITH A 3% ANNUAL ESCALATOR. ADDITIONAL CHARGES FOR 2.8 WILL APPLY.

TERM PRICE CLAUSE: PROPOSER MUST STATE

- (a) Prices firm for the full contract period: N; or
- (b) Prices subject to escalation/de-escalation: YES
- (c) If (b), state period for which prices will remain firm:
Through 12 MONTHS
- (d) if (b) state maximum escalation amount 3%

INTER-LOCAL PURCHASING: The City/County desires to make available to other local government entities of the State of Nebraska, by mutual agreement with the successful proposer, and properly authorized inter-local purchasing agreements, the right to purchase the same services, at the prices quoted, for the period of this contract. Each proposer shall indicated on the Proposal Form in the space provided below if he/she will honor Political Subdivision orders in accordance with the contract terms and conditions, in addition to orders from City of Lincoln/Lancaster County.

 YES NO

If "YES", Contract supplier or suppliers may honor pricing and extend the contract to political sub-divisions, cities and counties. Terms and conditions of the contract must be met by political sub-divisions, cities and counties. Under no circumstances shall the City of Lincoln/Lancaster County be contractually obligated or liable for any purchases by these political sub-divisions, cities or counties.

COMPANY REPRESENTATIVE responsible for the administration of this Agreement:

NAME: ROBERT A. DOWNEY
TITLE: EXECUTIVE DIRECTOR
PHONE NO: (402) 441-4482
E-Mail: RADGRAED@ALCTEL.NET

NOTE REGARDING 11.1

DUE TO PERSONNEL PRIVACY ISSUES CAPITAL HUMANE SOCIETY RECORDS RELATED TO THIS BID MAY BE EXAMINED BY JANA ROPER, LINCOLN CITY ATTORNEY, ONLY. NO COPIES OF SUCH RECORDS MAY BE MADE. SUCH EXAMINATION TO BE MADE BY APPOINTMENT AT CAPITAL HUMANE SOCIETY.

AFFIRMATIVE ACTION PROGRAM: Successful proposer will be required to comply with the provisions of the City's Affirmative Action Policy (Contract Compliance, Sec. 1.16). The Equal Opportunity Officer will determine compliance or non-compliance with the City's policy upon a complete and substantial review of successful proposer's equal opportunity policies, procedures and practices.

The undersigned signatory for the proposer represents and warrants that he has full and complete authority to submit this proposal to the City, and to enter into a contract if this proposal is accepted.

RETURN 2 COMPLETE COPIES OF PROPOSAL AND SUPPORTING MATERIAL.

MARK OUTSIDE OF PROPOSAL ENVELOPE:

SEALED PROPOSAL FOR SPEC. 08-005

CAPITAL HUMANE SOCIETY
COMPANY NAME

2320 PARK BLVD.
STREET ADDRESS or P.O. BOX

LINCOLN, NE. 68502
CITY, STATE ZIP CODE

(402) 441-4488 438-6182
TELEPHONE No. FAX No.

RADGRAD @ ALLTEL.NET
E-MAIL ADDRESS


BY (Signature)

ROBERT A. DOWNEY
(Print Name)

EXECUTIVE DIRECTOR
(Title)

JANUARY 22, 2008
(Date)

AS PER SPECIFICATION
TERMS OF PAYMENT

ACORD CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 03/06/2008
PRODUCER (402)434-7200 FAX (402)434-7272 UNICO Group, Inc. 4435 "O" Street P. O. Box 30275 Lincoln, NE 68510	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED Capital Humane Society Inc. 2320 Park Blvd Lincoln, NE 68502	INSURERS AFFORDING COVERAGE	NAIC #
	INSURER A: Cincinnati Insurance Co.	10677
	INSURER B: AIG	
	INSURER C: Philadelphia Insurance Co.	
	INSURER D:	
		INSURER E:

COVERAGES
 THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	CPP0821767/2010	11/13/2007	11/13/2008	EACH OCCURRENCE	\$ 1,000,000
					DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
					MED EXP (Any one person)	\$ 5,000
					PERSONAL & ADV INJURY	\$ 1,000,000
					GENERAL AGGREGATE	\$ 2,000,000
					PRODUCTS - COM/OP AGG	\$ 2,000,000
					GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	CPP0821767/2010	11/13/2007	11/13/2008	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
					BODILY INJURY (Per person)	\$
					BODILY INJURY (Per accident)	\$
					PROPERTY DAMAGE (Per accident)	\$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
A	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE	CPP0821767/2010	11/13/2007	11/13/2008	EACH OCCURRENCE	\$ 3,000,000
					AGGREGATE	\$ 3,000,000
						\$
						\$
					DEDUCTIBLE RETENTION \$	
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	WC308-46-12	11/13/2007	11/13/2008	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER	
					E.L. EACH ACCIDENT	\$ 100,000
					E.L. DISEASE - EA EMPLOYEE	\$ 100,000
					E.L. DISEASE - POLICY LIMIT	\$ 500,000
C	OTHER Directors & Officers Liability	PHSD291692	11/30/2007	11/30/2008	\$1,000,000 \$5,000 Deductible	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 City of Lincoln is shown as Additional Insured as respects the General Liability coverage.

CERTIFICATE HOLDER City of Lincoln 555 South 10th Street Lincoln, NE 68508	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE Ed Packard/MSS
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LICENSE NUMBER: NE110807
DATE ISSUED: 8/16/2007
EXPIRATION DATE: 9/30/2008

STATE of NEBRASKA
DEPARTMENT of AGRICULTURE
BUREAU of ANIMAL INDUSTRY

NEBRASKA COMMERCIAL DOG AND CAT OPERATORS INSPECTION ACT

FACILITY LICENSE

Robert A. Downey, Jr. Executive Director
2320 Park Blvd
Lincoln, NE 68502

Name of Facility: Capital Humane Society

THE ABOVE FACILITY HAS PAID THE APPROPRIATE FEES AND HAS BEEN ISSUED THIS LICENSE TO OPERATE AS A COMMERCIAL FACILITY
PURSUANT TO Neb. Rev. Stat. §§54-625 to 54-636

Dennis A. Hughes, DVM, Nebraska State Veterinarian

#14

08R-77

REQUEST FOR PROPOSALS SPECIFICATION NO. 08-005

The City of Lincoln, Nebraska intends to enter into a contract and invites you to submit a sealed proposal for:

Annual Requirements for Kennel Services

Sealed proposals will be received by the City of Lincoln, Nebraska on or before **12:00 noon, Wednesday, January 23, 2008** in the office of the Purchasing Agent, Suite 200, K Street Complex, (SW Wing), 440 South 8th Street, Lincoln, Nebraska 68508. Proposals will be publicly opened at the K Street Complex, reading only the names of the firms submitting proposals.

Proposals are available on our electronic bidding system. Prospective submitters must be registered on the County/ City's E-Bid site in order to receive electronic notices of bids or addendums.

To register go to: lincoln.ne.gov (type: "e-bid" - into search box, then click "supplier registration")
Questions concerning this process may be directed to City/County Purchasing at (402) 441-8314 or 441-7410 or vmeier@lincoln.ne.gov.

**ANNUAL REQUIREMENTS FOR
KENNEL SERVICE
Specification #08-005**

1. SCOPE

- 1.1 The City required an animal shelter and kennel facility to house captured and stray animals in the maintenance of an animal control program.
- 1.2 The awarded Contractor shall provide and maintain, at its own cost and expense, an animal shelter and kennel facility.
- 1.3 The awarded Contractor shall provide for those animals delivered to the shelter by the City Animal Control.
- 1.4 The program shall include euthanasia, disposal, boarding, feeding and supervision of the animals.
- 1.5 During the term of this contract such animal shelter and kennel facility will be accessible to the citizens of the City of Lincoln for a minimum of 40 hrs a week to include evenings and weekends.
 - 1.5.1 Exact times to be negotiated.
- 1.6 The awarded Contractor shall provide access to those portions of the shelter to the City and Health Director or his/her representative for the purpose of kenneling impounded animals during non-office hours.

2. SERVICES

- 2.1 The awarded Contractor shall provide the following services to the City:
 - 2.1.1 Boarding and/or disposition of the animal delivered to the shelter by the City, euthanasia or adoption, and the disposal of animal remains.
 - 2.1.2 Animals impounded for the City shall be held in a segregated kennel unit and be displayed for owner recovery.
 - 2.1.3 Injured impounded animals shall be held in specifically designate cages separate from the healthy impounded animals.
 - 2.1.4 Animals held for observation shall be held in specific designated cages and runs in a segregated portion of the kennel.
 - 2.1.4.1 The contractors veterinarian shall examine the biter animals being held for observation at the end of the 10 day period for signs of rabies.
 - 2.1.4.2 If the animal can be released to the owner as authorized by the Health Director, the veterinarian shall vaccinate the animal if not current on rabies.
 - 2.1.4.2.1 The owner of the animal shall be responsible for all costs incurred.
 - 2.1.5 Except in emergency situations, no more than one adult dog or cat shall be kept per run or cage.
 - 2.1.6 If directed by the LLCHD Health Director, provide decapitation of any impound animals that has been involved in a reported bite or is suspected of being rabid.
 - 2.1.7 Veterinarian fees and costs of transportation to and from the vet and all other fees shall be included in per-day costs for sick or injured animals picked up by the City.
 - 2.1.7.1 The City will pay fees until delivered to operator.
- 2.2 Any such animal that is not reclaimed by the owner and is released by the City, shall then be made available for adoption or shall be euthanized no sooner than 72 hours after being delivered to the shelter.
 - 2.2.1 After 72 hours, animals become kennel provider property.
- 2.3 Observation of any animal involved in a reported bite or suspected of being rabid or delivered to the shelter by the City shall be kept isolated indoors.
- 2.4 At the direction of the Health Director or his/her representative, decapitation of any impounded animal that has been involved in a reported bite or is suspected of being rabid by the Health Director or turned over to the awarded Contractor by the owner.
- 2.5 Provide a refuse container for disposal of dead animals.
 - 2.5.1 Said animals shall be bagged in plastic prior to disposal, except for extremely large animals.
- 2.6 Collection and accounts of all City required fees for animals reclaimed by the owners at the shelter.
- 2.7 Unclaimed City impounded animals released for disposition by the city that are not known to have exhibited vicious tendencies or other serious behavioral disorder may be placed for adoption by the awarded Contractor .

- 2.8 If Animal Control impounds animals from a cruelty/neglect investigation, shall examine the animal(s), document the health condition of the animal(s), and provide appropriate humane care to minimize pain and suffering.
- 2.9 All news media contacts and questions regarding City impound animals shall be referred to the Health Director or his/her representative.
 - 2.9.1 Contractor shall not initiate any publicity regarding any City Impound animals or operations.
3. **TERM AND COMPENSATION**
 - 3.1 The term of the contract will be for four (4) years beginning September 1, 2008 and ending August 31, 2012, thereafter renewable for an additional mutually agreeable four (4) year period.
 - 3.2 The awarded Contractor shall be paid per animal per month basis beginning October 1, 2008.
 - 3.3 Payment shall be made on the first day of the month following the month services are performed.
4. **FEES**
 - 4.1 City will not act as an intermediary and collect the established contract fees for adoption, surrender, administrative, veterinary care, or disposal and will not deliver said fees or animals to the awarded Contractor.
5. **POLICY AND PROCEDURE**
 - 5.1 Policy and procedure relating to the performance of a contract shall be reviewed, negotiated and approved by both parties prior to the start of any contract year.
6. **REPORTS AND FEES COLLECTED**
 - 6.1 The Contractor shall submit to the City:
 - 6.1.1 On a weekly basis, all City fees will be collected
 - 6.1.2 on a monthly basis, the number of City animals impounded and the number of days each animal was held in the shelter.
 - 6.1.3 Report on a monthly bases the number of animals euthanized and the number released for adoption.
 - 6.1.4 On a monthly bases report on the number of animals held for observation
 - 6.1.5 Annual income and expenditure report related to the performance of the contract shall be submitted 90 days after contract year.
 - 6.2 Should any animal be house in a location other that the primary location listed herein the contractor shall notify the City.
7. **AUDIT**
 - 7.1 The awarded Contractor will allow the City or the Health Director or his/her representative shall have access to documents, papers, etc. prepared by the Contractor in the fulfillment of this contract for the purpose of audit and examination.
8. **INSURANCE**
 - 8.1 As per attached.
9. **APPLICABLE LAWS**
 - 9.1 The awarded Contractor will abide by all applicable Federal, State and Local laws and regulations which apply to the performance of this contract if awarded a contract.
 - 9.2 This includes but not limited to all City and County rules, regulations and ordinances.
 - 9.3 As required by law the operator shall be licensed/permitted (i.e. Commercial Boarding Kennel, Shelter, etc.) a copy of such license must be submitted with the proposal response.
 - 9.3.1 Failure to provide the certificates with the proposal is grounds for rejection of said proposal.
10. **ORDINANCE INTERPRETATION**
 - 10.1 All interpretation and applications of the Lincoln Municipal Code shall be referred to the City.

11. **SUBMITTING PROPOSALS**

- 11.1 In addition to other information requested above the estimated budget must be submitted with the proposal to include but not limited to:
 - 11.1.1 Personnel by category and wages
 - 11.1.2 Supply costs
 - 11.1.3 Equipment costs
 - 11.1.4 Contracts other than the City's
 - 11.1.5 Travel and milage
 - 11.1.6 Printing and copying costs
 - 11.1.7 All Insurance costs
 - 11.1.8 Utilities costs
 - 11.1.9 Maintenance and repair
 - 11.1.10 Rental costs
 - 11.1.11 Misc. Costs
- 11.2 Any and all costs for submitting the proposal shall not be passed on to the City or County.

PROPOSAL
SPECIFICATION NO. 08-005
PROPOSAL OPENING TIME: 12:00 NOON
DATE: Wednesday, January 23, 2007

The undersigned, having full knowledge of the requirements of the City of Lincoln for the below listed phases and the contract documents (which include Notice, Instructions, this Proposal, Specifications, Contract, and any and all addenda which are issued electronically via the E-bid system) and all other conditions of the Proposal, agrees to enter into a contract with the City the below listed fees for the performance of this Specification, complete in every respect, in strict accordance with the contract documents at and for fees listed below.

ADDENDA RECEIPT: The receipt of addenda to the specification numbers _____ through _____ are hereby acknowledged. Failure of any submitter to receive any addendum or interpretation of the specifications shall not relieve the submitter from any obligations specified in the request. All addenda shall become part of the final contract document.

<u>Item</u>	<u>Description</u>	<u>Estimate</u>	<u>Per animal cost per day</u>
1.	One (1) year of Kenneling Service as described in specification.	4,000 Various animals	\$ _____

Location where services are performed _____

NO BID/PROPOSAL SECURITY REQUIRED

TERM OF AGREEMENT is four (4) years beginning September 1, 2008 and ending August 31, 2012 with option to renew for an additional mutually agreeable four (4) year periods.

Contract Extension Renewal is an option: Yes ___ No ___

TERM PRICE CLAUSE: PROPOSER MUST STATE

- (a) Prices firm for the full contract period: _____; or
- (b) Prices subject to escalation/de-escalation: _____.
- (c) If (b), state period for which prices will remain firm:
Through _____.
- (d) if (b) state maximum escalation amount _____

INTER-LOCAL PURCHASING: The City/County desires to make available to other local government entities of the State of Nebraska, by mutual agreement with the successful proposer, and properly authorized inter-local purchasing agreements, the right to purchase the same services, at the prices quoted, for the period of this contract. Each proposer shall indicated on the Proposal Form in the space provided below if he/she will honor Political Subdivision orders in accordance with the contract terms and conditions, in addition to orders from City of Lincoln/Lancaster County.

___ YES ___ NO

If "YES", Contract supplier or suppliers may honor pricing and extend the contract to political sub-divisions, cities and counties. Terms and conditions of the contract must be met by political sub-divisions, cities and counties. Under no circumstances shall the City of Lincoln/Lancaster County be contractually obligated or liable for any purchases by these political sub-divisions, cities or counties.

COMPANY REPRESENTATIVE responsible for the administration of this Agreement:

NAME: _____
TITLE: _____
PHONE NO. _____
E-Mail _____

AFFIRMATIVE ACTION PROGRAM: Successful proposer will be required to comply with the provisions of the City's Affirmative Action Policy (Contract Compliance, Sec. 1.16). The Equal Opportunity Officer will determine compliance or non-compliance with the City's policy upon a complete and substantial review of successful proposer's equal opportunity policies, procedures and practices.

The undersigned signatory for the proposer represents and warrants that he has full and complete authority to submit this proposal to the City, and to enter into a contract if this proposal is accepted.

**RETURN 2 COMPLETE COPIES OF PROPOSAL AND SUPPORTING MATERIAL.
MARK OUTSIDE OF PROPOSAL ENVELOPE:
SEALED PROPOSAL FOR SPEC. 08-005**

COMPANY NAME

BY (Signature)

STREET ADDRESS or P.O. BOX

(Print Name)

CITY, STATE ZIP CODE

(Title)

TELEPHONE No. FAX No.

(Date)

E-MAIL ADDRESS

TERMS OF PAYMENT

INSTRUCTIONS TO PROPOSERS

CITY OF LINCOLN, NEBRASKA PURCHASING DIVISION

1. PROPOSAL PROCEDURE

- 1.1 All responses to electronic RFP's will be completed as outlined in this document and the specifications using a two step process.
 - A) Proposers shall respond electronically to all attributes and addendums as required.
 - B) All written responses and information shall be mailed or delivered to the Purchasing Agent as outlined in the specifications.
- 1.2 Proposer shall submit complete sets of the RFP documents and all supporting material as indicated in the specifications. Any interlineation, alteration or erasure on the specification document shall be initialed by the proposer. Proposer shall not change the proposal form nor make additional stipulations on the specification document. Any amplified or qualifying information shall be on the Proposer's letterhead and firmly attached to the response/offer document.
- 1.3 Proposed prices shall be submitted on company letterhead with the proposal if the specifications indicate that price will be evaluated as part of the award criteria.
- 1.4 Proposed prices shall be submitted on company letterhead and sealed in a separate envelope with the RFP number, description and company name clearly marked on the outside of the envelope if the specifications indicate that price is not evaluated as part of the award criteria.
- 1.5 Failure to complete the electronic and written portions of the RFP may cause the proposal to be rejected.
- 1.6 Response by a firm / organization other than a corporation must include the name and address of each member.
- 1.7 A response by a corporation must be signed in the name of such corporation by a duly authorized official thereof.
- 1.8 Any person signing a response for a firm, corporation, or other organization must show evidence of his authority so to bind such firm, corporation, or organization.
- 1.9 Proposals received after the time and date established for receiving offers will be rejected.

2. EQUAL OPPORTUNITY

- 2.1 Each proposer agrees that it shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, national origin, age, or marital status. In the employment of persons, proposer shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to race, color, religion, sex, disability, national origin, age, or marital status.

3. DATA PRIVACY

- 3.1 Proposer agrees to abide by all applicable State and Federal laws and regulations concerning the handling and disclosure of private and confidential information concerning individuals and corporations as to inventions, copyrights, patents and patent rights.
- 3.2 The proposer agrees to hold the City harmless from any claims resulting from the proposer's unlawful disclosure or use of private or confidential information.
- 3.3 Proposer agrees to comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and implementing regulations pertaining to confidentiality of health information.

1. If applicable to the work requested a sample "Business Associate Contract" will be included, which will be part of the contract and incorporated by this reference.

4. PROPOSER'S REPRESENTATION

- 4.1 Each proposer by signing and submitting an offer, represents that he/she has read and understands the specification documents, and the offer has been made in accordance therewith.
- 4.2 Each offer represents the proposer is familiar with the local conditions under which the work will take place and has correlated observations with the RFP requirements

5. INDEPENDENT PRICE DETERMINATION

- 5.1 By signing and submitting this RFP, the proposer certifies that the prices offered have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, with any other proposer competitor; unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the proposer prior to RFP opening directly or indirectly to any other competitor; no attempt has been made, or will be made, by the proposer to induce any person or firm to submit, or not to submit, a response for the purpose of restricting competition.

6. SPECIFICATION CLARIFICATION

- 6.1 Proposers shall promptly notify the Purchasing Agent of any ambiguity, inconsistency or error which they may discover upon examination of specification documents.
- 6.2 Proposers desiring clarification or interpretation of the specification documents shall make a written request which must reach the Purchasing Agent at least seven (7) calendar days prior to date and time for response receipt.
- 6.3 Interpretations, corrections and changes made to the specification documents will be made by electronic addenda.
- 6.4 Oral interpretations/changes to Specification Documents made in any other manner, will not be binding on the City; proposers shall not rely upon oral interpretations.

7. ADDENDA

- 7.1 Addenda are instruments issued by the City prior to the date for receipt of offers which modify or interpret the specification document by addition, deletion, clarification or correction.
- 7.2 Changes made to the specification documents will be made by electronic addenda to all bidders via e-mail notice.
- 7.3 No addendum will be issued later than forty-eight (48) hours prior to the date and time for receipt of offers, except an addendum withdrawing the RFP, or addendum including postponement.
- 7.4 Proposers shall verify addendum receipt electronically prior to bid closing or RFP may be rejected.

8. ANTI-LOBBYING PROVISION

- 8.1 During the period between the bid close date and the contract award, bidders, including their agents and representatives, shall not directly discuss or promote their proposal with any member of the City Council or City Staff except in the course of City-sponsored inquiries, briefings, interviews, or presentations, unless requested by the City.

9. SITE VISITATION

- 9.1 Proposers shall inform themselves of the conditions under which work is to be performed, including: site of work, the structures or obstacles which may be encountered and all other relevant matters concerning work performance.
- 9.2 The Proposer will not be allowed any extra compensation by or for any condition which he/she might fully have informed themselves of prior to submitting the offer.

10. EVALUATION AND AWARD

- 10.1 The signed proposal shall be considered an offer on the part of the proposer. Such offer shall be deemed accepted upon issuance by the City of purchase orders, contract award notifications, or other contract documents appropriate to the work.
- 10.2 No offer shall be withdrawn for a period of ninety (90) calendar days after the time/ date established for receiving offers, and each proposer agrees in submitting an offer.
- 10.3 **Fee envelopes MAY be opened** and evaluated as part of the criteria for ranking interested proposers.
- 10.4 The RFP process is designed to be a competitive negotiation platform, where price is not required to be the sole determinative factor; also the City has the flexibility to negotiate with a select firm or selected firms to arrive at a mutually agreeable relationship.
- 10.5 A committee will be assigned the task of reviewing the proposals received.
1. The committee may request documentation from Proposer(s) of any information provided in their proposal response, or require the Proposer to clarify or expand qualification statements.
 2. The committee may also require a site visit and/or verbal interview with a Proposer or select group of Proposers to clarify and expand upon the proposal response.
- 10.6 The RFP will be awarded to the most responsible proposer whose proposal will be most advantageous to the City, and deemed to best serve City requirements.
- 10.7 The City reserves the right to accept or reject any or all offers, parts of offers; request rebids; waive irregularities and technicalities in offers; such as shall best serve the requirements and interests of the City.

11. TERMINATION/ASSIGNMENT

- 11.1 The City may terminate the Contract if the Contractor:
1. Refuses or fails to supply enough properly skilled workers or proper equipment to satisfactorily provide/ complete the work as requested.
 2. Disregards laws, ordinances, or regulations or orders of a public authority having jurisdiction over the Contract.
 3. Otherwise commits a substantial breach of any provision of the Contract Document.
- 11.2 *By mutual agreement both parties of the contract agreement*, upon receipt and acceptance of not less than a thirty (30) calendar days written notice, the contract may be terminated on an agreed upon date, prior to the end of the contract period, without penalty to either party.
1. Upon any such termination, the Contractor agrees to waive any claims for damages, including loss of anticipated profits, on account thereof, and as the sole right and remedy of the Contractor, the City shall pay Contractor in accordance with this section.
 2. Upon such termination, the obligations of the Contract shall continue as to options of the work already performed and as to bona fide obligations the Contractor assumed prior to the date of termination.

- 11.3 In the event of any proceedings by or against either party, voluntary or involuntary, in bankruptcy or insolvency, or for the appointment of a receiver or trustee for the benefit of creditors, of the property of the Contractor, the City may cancel this contract or affirm the contract and hold the Contractor responsible for damages.
- 11.4 The contract established as a result of this RFP process shall not be transferred to/or assigned without prior written consent of the City.

12. INDEMNIFICATION

- 12.1 The proposer shall indemnify and hold harmless the City, its members, its officers and employees from and against all claims, damages, losses, and expenses, including, but not limited to attorney's fees arising out of or resulting from the performance of the contract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property other than goods, materials and equipment furnished under this contract, including the loss of use resulting therefrom; is caused in whole or in part by any one of them or anyone for whose acts made by any one of them or anyone for whose acts made by any of them may be liable, regardless of whether or not it is caused by a party indemnified hereunder.
- 12.2 In any and all claims against the City or any of its members, officers or employees by an employee of the proposer, any subcontractor, anyone directly or indirectly employed by any of them or by anyone for whose acts made by any of them may be liable, the indemnification obligation under paragraph 9.1 shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable by or for the proposer or any subcontractor under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.

13. TERMS OF PAYMENT

- 13.1 Unless other specification provisions state otherwise, payment in full will be made by the City within thirty (30) calendar days after all labor has been performed and all equipment or other merchandise has been delivered, and all such labor and equipment and other materials have met all contract specifications.

14. LAWS

- 14.1 The Laws of the State of Nebraska shall govern the rights, obligations, and remedies of the Parties under this proposal and any agreement reached as a result of this process.

15. LIVING WAGE

- 15.1 The bidders agree to pay all employees employed in the performance of this contract, a base wage of not less than the City Living Wage per Section 2.81 of the Lincoln Municipal Code. This wage is subject to change every July.

16. AFFIRMATIVE ACTION

- 16.1 The City of Lincoln-Lancaster County Purchasing Division provides equal opportunity for all bidders and encourages minority businesses and women's business enterprises to participate in our bidding process.

INSURANCE REQUIREMENTS FOR ALL CITY CONTRACTS

1. GENERAL PROVISIONS

- A. **Indemnification.** The Contractor shall indemnify and save harmless the City of Lincoln, Nebraska from and against all losses, claims, damages, and expenses, including attorney's fees, arising out of or resulting from the performance of the contract that results in bodily injury, sickness, disease, death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom and is caused in whole or in part by the Contractor, any subcontractor, any directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This section will not require the Contractor to indemnify or hold harmless the City of Lincoln for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence of the City of Lincoln, Nebraska.
- B. **Approved Coverage Prior to Commencing Work/Subcontractors Included.** Contractor shall purchase and maintain in place insurance to Protect Contractor and City against all liabilities and hazards as provided in this article throughout the duration of the Contract. Contractor shall not commence work under this contract until the Contractor has obtained all insurance required under this Section and such insurance has been approved by the City Attorney for the City of Lincoln, nor shall the Contractor allow any subcontractor to commence work on any subcontract until all similar insurance required of the subcontractor has been so obtained and approved.
- C. **Occurrence Basis Coverage.** All insurance shall be provided on an **occurrence basis** and not on a claims made basis, except for hazardous materials, errors and omissions, or other coverage not reasonably available on an occurrence basis; provided that all such claims made coverage is subject to the prior written approval of the City Attorney and must be clearly indicated as such in any certificate showing coverage.
- D. **Authorized and Rated Insurers Required.** All insurance coverage are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of no less than A:VII unless specific approval has been granted by the City Attorney.
- E. **Certificates Showing Coverage.** All certificates of insurance shall be filed with the City Attorney, and may utilize an appropriate standard ACORD Certificate of Insurance form showing the specific limits of insurance coverage required by this Article; provided that restrictions, qualifications or declarations inconsistent with the requirements of this Article shall not relieve the Contractor from providing insurance as required herein. Such certificates shall show the City of Lincoln as additional insured, including by specific endorsement where necessary, as indicated in the following requirements. Such certificate shall specifically state that the related insurance policies are to be endorsed to require the insurer to provide the City of Lincoln thirty days, notice of cancellation, non-renewal or any material reduction in the stated amounts or limits of insurance coverage.
- F. **Terminology.** The terms "insurance," "insurance policy," or "coverage" as used in this article are used interchangeably and shall have the same meaning as "insurance" unless the context clearly requires otherwise. References to "ISO®" forms are merely for convenience and ease of reference, and an equivalent or better form as determined acceptable by the City Attorney may be used. (Note: ISO® is a registered trademark of ISO Properties, Inc.)

2. INSURANCE REQUIREMENTS

- A. **Scope of Required Coverage.** The Contractor shall take out and maintain during the life of Contract such insurance in the forms and minimum amounts as specified in this Article and as will protect Contractor and City from the following claims arising out of or resulting from or in connection

with the Contractor's operations, undertakings or omissions directly or indirectly related to the Contract, whether by the Contractor or any Subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (1) Claims under workers' compensation, disability benefit, or other employee benefit acts;
- (2) Claims arising out of bodily injury, occupational sickness or disease, or death of an employee or any other person;
- (3) Claims customarily covered under personal injury liability coverage;
- (4) Claims other than to the work itself arising out of an injury to or destruction of tangible property, including the loss of use resulting therefrom;
- (5) Claims arising out of ownership, maintenance or use of any motor vehicle;
- (6) Railroad protective liability coverage in the event the contract involves work to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing.

B. Worker's Compensation Insurance and Employer's Liability Insurance. The Contractor shall provide applicable statutory Worker's Compensation Insurance with minimum limits as provided below covering all Contractor's employees, and in the case of any subcontracted work, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for Subcontractor's employees.

The Contractor shall provide Employer's Liability Insurance with minimum limits as provided below placed with an insurance company authorized to write such insurance in all states where the Contractor will have employees located in the performance of this contract, and the Contractor shall require each Subcontractor similarly to maintain Employer's Liability Insurance on the Subcontractor's employees.

Coverage	Listing	Min Amt	Notes
Worker's Comp.			
	State	Statutory	
	Applicable Federal	Statutory	
Employer's Liability			
	Bodily Injury by accident	\$500,000	each accident
	Bodily Injury by disease	\$500,000	each employee
	Bodily Injury	\$500,000	policy limit

C. Commercial General Liability Insurance.

- (1) The Contractor shall provide Commercial General Liability Insurance in a policy form providing no less comprehensive and no more restrictive coverage than provided under the ISO® form CG00010798 or newer with standard exclusions "a" through "o" and with minimum limits as provided below. Any other exclusions that operate to contradict or materially alter the standard exclusions shall be specifically listed on the certificate of insurance and shall be subject to the prior written approval of the City Attorney.

Coverage	Min Amt	Notes
General	\$2,000,000	Aggregate
Products and Completed Operations	\$2,000,000	Aggregate
Personal and Advertising Injury	\$1,000,000	
Each Occurrence	\$1,000,000	
Fire Damage Limit	\$ 100,000	any one fire
Medical Damage Limit	\$ 10,000	any one person

(2) The required Commercial General Liability Insurance shall also include the following:

- Coverage for all premises and operations
- Endorsement to provide the general aggregate per project endorsement
- Personal and advertising injury included
- Operations by independent contractors included
- Contractual liability coverage included
- X.C.U. Coverage including coverage for demolition of any building or structure, collapse, explosion, blasting, excavation and damage to property below the surface of ground.
- Any fellow employee exclusions shall be deleted
- Coverage shall not contain an absolute pollution exclusion, and applicable remaining coverage shall apply for pollution exposures arising from products and completed operations.
- Coverage for products and completed operations maintained for duration of work and shall be maintained for a minimum of three years after final acceptance under the Contract or the warranty period for the same whichever is longer, unless modified in any Special Provisions.
- Contractual Liability coverage shall include contractually assumed defense costs in addition to any policy limits.

(3) If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing, Railroad Contractual Liability Endorsement (ISO® form CG24170196 or newer).

(4) City may at its sole option, and in lieu of being additional insured on the Contractor's policy, by written requirement in the Special Provisions or by written change order, require Contractor to provide a separate Owner's Protective liability policy. The premium cost to obtain such insurance shall be as paid as provided in the Special Provision or change order, with any related cost savings as reasonably determined by the City being reimbursed or paid to the City.

D. Vehicle liability insurance coverage.

- The Contractor shall provide reasonable insurance coverage for all owned, non-owned, hired and leased vehicles with specific endorsements to include contractual liability coverage and delete any fellow employee exclusion.
- If specifically required in the Special Provisions, the required coverage shall also include an endorsement for auto cargo pollution (ISO® form CA 99 48).

E. Railroad Protective Liability. If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing or otherwise required by the Special Provisions or applicable requirements of an affected railroad, the Contractor shall provide Railroad Protective Liability Insurance naming the affected railroad/s as insured with

minimum limits for bodily injury and property damage of \$2,000,000 per occurrence, \$6,000,000 aggregate, or such other limits as required in the Special Provisions or by the affected railroad. The original of the policy shall be furnished to the railroad and a certified copy of the same furnished to the City Attorney's office prior to any related construction or entry upon railroad premises by the Contractor or for work related to the Contract.

- F. **Umbrella or Excess Insurance.** The Contractor shall provide Umbrella or Excess insurance coverage with minimum coverage limits of \$3,000,000 each occurrence and aggregate.
- G. **City included as Insured on Contractor's Policy – Endorsements required.** The Contractor shall provide adequate written documentation, including applicable ACORD certificates, declarations pages or other acceptable policy information demonstrating that the City is included as an additional insured along with the Contractor with respect to all of the coverages required in this "Section 2A Insurance Requirements," except for applicable Worker's Compensation coverage, to include all work performed for the City and specifically including, but not limited to, any liability caused or contributed to by the act, error, or omission of the Contractor, including any related subcontractors, third parties, agents, employees, officers or assigns of any of them. The documentation or endorsement shall specifically include the city as an additional insured for purposes of Products and Completed Operations. The inclusion of the City as additional insured shall be for coverage only on a primary basis for liability coverage, and no coverage shall contain a policy or other restriction or attempt to provide restricted coverage for the City, whether on an excess, contributory or other basis regardless of any other insurance coverage available to the City.

3. CONTRACTOR'S INDEMNITY – CONTRACTUAL LIABILITY INSURANCE

- A. To the same extent as specified for minimum coverage requirements in Section 2 above, the required insurance shall include contractual liability coverage to include indemnification and hold harmless agreements and provisions in the related Contract Documents, specifically including the following provision:
- (1) To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the City, its officers, agents, employees, volunteers and consultants from and against any and all claims, damages, losses, costs, and expenses, including but not limited to attorney's fees and costs arising out of or related to the Contract or the Contractor's activities, errors, or omissions related to the Contract including liabilities or penalties imposed by applicable, law, rule or regulation in connection therewith; provided that such claims, damages, losses, costs, and expenses, including but not limited to attorney's fees and costs:
 - is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use therefrom, and
 - is caused in whole or in part by any act or omission of the Contractor, any subcontractor, agent, officer, employee, or assigns of the same or by 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 whole or in part by a party indemnified hereunder.
 - (2) Such indemnification shall not be construed to negate, abridge, limit or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section.
- B. In any and all claims by any employee (whether an employee of the Contractor or subcontractor, or their respective agents or assigns by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable as an employer) in whole or in part against the City, its officers, agents, employees, volunteers or consultants, the above indemnification shall not be limited in any way by the amount of damages, compensation, benefits or other contributions payable by or on behalf of a the employer under Worker's Compensation statutes, disability benefit acts, or any other employee benefit or payment acts as the case may be.

- C. The obligations of indemnification herein shall not include or extend to:
 - (1) Any outside engineer's or architect's professional errors and omissions involving the approval or furnishing of maps, drawings, opinions, reports, surveys, change orders, designs or specifications within the scope of professional services provided to the City and related to the Contract; and
 - (2) Any claims arising out of the negligence of the City to the extent the same is the sole and proximate cause of the injury or damage so claimed.
- D. In the event of any litigation of any such claims shall be commenced against the City, Contractor shall defend the same at Contractor's sole expense upon notice thereof from the City. Contractor shall notify the insuring company that the City reserves and does not waive any statutory or governmental immunity and neither Contractor, nor Contractor's counsel whether employed by Contractor or by an insurer on behalf of the Contractor shall waive such defenses or enter into any settlement or other disposition requiring waiver of any defenses or immunity of the City without the express written consent of the City.

4. CONTRACTOR'S INSURANCE FOR OTHER LOSSES.

- A. Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools owned, rented or used in connection with the Contract including any tools, machinery, equipment, storage devices, containers, sheds, temporary structures, staging structures, scaffolding, fences, forms, braces, jigs, screens, brackets, vehicles and the like owned or rented by Contractor, or Contractor's agents, subcontractors, suppliers, or employees.
- B. In connection with the above, Contractor shall cause or require any applicable insurance related to physical damage of the same to provide a waiver of a right of subrogation against the City.

5. NOTIFICATION IN EVENT OF LIABILITY OR DAMAGE.

- A. The Contractor shall promptly notify the City in writing and provide a copy of all claims and information presented to any of Contractor's insurance carrier/s upon any loss or claim or upon any occurrence giving rise to any liability or potential liability related to the Contract or related work. The notice to the City shall include pertinent details of the claim or liability and an estimate of damages, names of witnesses, and other pertinent information including the amount of the claim, if any.
- B. In the event the City receives a claim or otherwise has actual knowledge of an any loss or claim arising out of the Contract or related work and not otherwise known to or made against the Contractor, the City shall promptly notify the Contractor of the same in writing, including pertinent details of the claim or liability; Provided, however the City shall have no duty to inspect the project to obtain such knowledge, and provided further that the City's obligations, if any, shall not relieve the Contractor of any liability or obligation hereunder.

6. PROPERTY INSURANCE/ BUILDER'S RISK.

- A. The Contractor shall provide property insurance (a/k/a Builder's Risk or installation Floater) on all Projects involving construction or installation of buildings or structures and other projects where provided in the Special Provisions. Such insurance shall be provided in the minimum amount of the total contract sum and in addition applicable modifications thereto for the entire work on a replacement cost basis. Such insurance shall be maintained until the City completes final acceptance of the work as provided in the Contract. Such insurance shall be written and endorsed, where applicable, to include the interests of the City, Contractor, Subcontractors, Sub-subcontractors in the related work. The maximum deductible for such insurance shall be \$5,000 for each occurrence, which deductible shall be the responsibility of the Contractor. Such insurance shall contain a "permission to occupy" endorsement.

- B. All related Property Insurance shall be provided on a "Special Perils" or similar policy form and shall at a minimum insure against perils of fire including extended coverage and physical loss or damage including without limitation or duplication of coverage: flood, earthquake, theft, vandalism, malicious mischief, collapse, and debris removal, including demolition whether occasioned by the loss or by enforcement of applicable legal or safety requirements including compensation or costs for City's related costs and expenses (as owner) including labor required as a result of such loss.
- C. All related Property Insurance shall include coverage for falsework, temporary buildings, work stored off-site or in-transit to the site, whether in whole or in part. Coverage for work off-site or in-transit shall be a minimum of 10% of the amount of the policy.
- D. The Contractor's Property Insurance shall be primary coverage for any insured loss related to or arising out of the Contract and shall not be reduced by or coordinated with separate property insurance maintained by the City.