NO. 126139
IN THE ILLINOIS SUPREME COURT

MOORE LANDSCAPES, LLC, Defendant-Appellant, v. SAMUEL VALERIO, JOSE PAZ, RUBEN GARCIA BARDOMIANO PAZ, EVARISTO VALERIO, LUIS MONDRAGON, SERGIO APARICIO, RAUL BERMUDEZ, RODRIGO VALERIO, JAVIER MORA, MARCOS HUERTA, JAIME MORA, Plaintiffs-Appellees.	)	On Appeal from the Order entered by the Appellate Court of Illinois, First Judicial District, No. 1-19-0185, on March 26, 2020, rehearing denied on April 22, 2020 There Heard on Appeal from the Order of The Circuit Court of Cook County, Case No. 2018 L 009656, entered January 25, 2019 ORAL ARGUMENT REQUESTED

BRIEF OF APPELLANT MOORE LANDSCAPES, LLC

Peter J. Gillespie
Brian K. Jackson
Laner Muchin, Ltd.
515 North State Street, Suite 2800
Chicago, Illinois 60654
T (312) 467-9800
F (312) 467-9479
pgillespie@lanermuchin.com
bjackson@lanermuchin.com

ORAL ARGUMENT REQUESTED

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Carolyn Taft Grosboll
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I. NATURE OF THE CASE

This action was brought by twelve individuals who were employed by Moore Landscapes and who performed work in fulfillment of agreements between Moore Landscapes and the Chicago Park District (which is not a party to this action). On a motion to dismiss brought by Moore Landscapes, the Trial Court held that the agreements giving rise to the claims at issue did not contain stipulations to pay for labor at a prevailing wage. Accordingly, the Trial Court granted the motion to dismiss in favor of Moore Landscapes and against plaintiffs. On appeal, the First District Appellate Court reversed. The dismissal of the plaintiffs' claims raises a question as to whether the plaintiffs' pleading stated a claim upon which relief could be granted as a matter of law.

II. ISSUES PRESENTED FOR REVIEW

I. Whether the appellate court erred in finding that the plaintiffs could bring a claim under the Prevailing Wage Act when the underlying contracts from the public body did not include stipulations that required the payment of prevailing wages.

II. Whether the appellate court impermissibly ignored the carefully created enforcement scheme set forth within the Prevailing Wage Act when it held that the statute provided private parties a remedy in cases where the contracts at issue did not contain a stipulation requiring payment of prevailing wages.

III. Whether the appellate court impermissibly authorized the trial court to usurp the authority of the executive branch to enforce the Prevailing Wage Act in cases in which the contract did not include a stipulation requiring payment of prevailing wages.

III. JURISDICTIONAL STATEMENT AND JUDGMENT BELOW

On January 25, 2019, the Circuit Court for Cook County, Illinois entered an Order granting Moore Landscapes' 2-619.1 motion to dismiss Plaintiffs' complaint. On January 28, 2019, Plaintiffs filed a Notice of Appeal to the Appellate Court of Illinois, First District. On March 26, 2020, the Appellate Court issued its Order reversing the Circuit Court's January 28, 2019 Order. On April 22, 2020, the Appellate Court denied Moore Landscapes' Petition for Rehearing. This Court granted Moore Landscapes' Petition for Review on September 30, 2020.

IV. STANDARD OF REVIEW

A review of a motion to dismiss under either Section 2-615 or 2-619 presents a question of law that is subject to *de novo* review. *Tedrick v. Community Resource Center, Inc.*, 235 Ill. 2d 155, 161 (2009). Questions involving statutory construction are also reviewed *de novo*. *Citizens Opposing Pollution v. ExxonMobil Coal U.S.A.*, 2012 IL 111286, ¶ 23 (2012).

V. STATUTES INVOLVED

820 ILCS 130/4

Sec. 4. Ascertaining prevailing wage.

> (a) The prevailing rate of wages paid to individuals covered under this Act shall not be less than the rate that prevails for work of a similar character on public works in the locality in which the work is performed under collective bargaining agreements or understandings between employers or employer associations and bona fide labor organizations relating to each craft or type of worker or mechanic needed to execute the contract or perform such work, and collective bargaining agreements or understandings successor thereto, provided that said employers or members of said employer associations employ at least 30% of the laborers, workers, or mechanics in the same trade or occupation in the locality where the work is being performed.
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> * * * * * * * * * *

(d) The public body awarding any contract for public work or otherwise undertaking any public works shall specify in the call for bids for the contract, or where the public body performs the work without letting the contract in a written instrument provided to the contractor, that the general prevailing rate of wages in the locality for each craft or type of worker or mechanic needed to execute the contract or perform such work, also the general prevailing rate for legal holiday and overtime work, as ascertained by the Department of Labor shall be paid for each craft or type of worker needed to execute the contract or to perform such work, and it shall be mandatory upon the contractor to whom the contract is awarded and upon any subcontractor under him, and where the public body performs the work, upon the public body, to pay not less than the specified rates to all laborers, workers and mechanics employed by them in the execution of the contract or such work. Compliance with this Act is a matter of statewide concern, and a public body may not opt out of any provisions herein.

(e) The public body or other entity awarding the contract shall cause to be inserted in the project specifications and the contract a stipulation to the effect that not less than the prevailing rate of wages as found by the Department of Labor or determined by the court on review shall be paid to all laborers, workers and mechanics performing work under the contract.

* * * * * * * * * *

(g) Where a complaint is made and the Department of Labor determines that a violation occurred, the Department of Labor shall determine if proper written notice under this Section 4 was given. If proper written notice was not provided to the contractor by the public body or other entity, the Department of Labor shall order the public body or other entity to pay any interest, penalties or fines that would have been owed by the contractor if proper written notice were provided. The failure by a public body or other entity to provide written notice does not relieve the contractor of the duty to comply with the prevailing wage rate, nor of the obligation to pay any back wages, as determined under this Act. For the purposes of this subsection, back wages shall be limited to the difference between the actual amount paid and the prevailing rate of wages required to be paid for the project. The failure of a public body or other entity to provide written notice under this Section 4 does not diminish the right of a laborer, worker, or mechanic to the prevailing rate of wages as determined under this Act.

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820 ILCS 130/6

Sec. 6. Any officer, agent or representative of any public body who willfully violates, or willfully fails to comply with, any of the provisions of this Act, and any contractor or subcontractor, and any officer, employee, or agent thereof, who as such officer, employee, or agent, has a duty to create, keep, maintain, or produce any record or document required by this Act to be created,

kept, maintained, or produced who willfully fails to create, keep, maintain, or produce such record or document as or when required by this Act, is guilty of a Class A misdemeanor.

The Department of Labor shall inquire diligently as to any violation of this Act, shall institute actions for penalties herein prescribed, and shall enforce generally the provisions of this Act. The Attorney General shall prosecute such cases upon complaint by the Department or any interested person.

* * * * * * * * *

820 ILCS 130/11

Sec. 11. No public works project shall be instituted unless the provisions of this Act have been complied with. The provisions of this Act shall not be applicable to Federal construction projects which require a prevailing wage determination by the United States Secretary of Labor. The Illinois Department of Labor represented by the Attorney General is empowered to sue for injunctive relief against the awarding of any contract or the continuation of work under any contract for public works at a time when the prevailing wage prerequisites have not been met. Any contract for public works awarded at a time when the prevailing wage prerequisites had not been met shall be void as against public policy and the contractor is prohibited from recovering any damages for the voiding of the contract or pursuant to the terms of the contract. The contractor is limited to a claim for amounts actually paid for labor and materials supplied to the public body. Where objections to a determination of the prevailing rate of wages or a court action relative thereto is pending, the public body shall not continue work on the project unless sufficient funds are available to pay increased wages if such are finally determined or unless the Department of Labor certifies such determination of the prevailing rate of wages as correct.

Any laborer, worker or mechanic employed by the contractor or by any sub-contractor under him who is paid for his services in a sum less than the stipulated rates for work done under such contract, shall have a right of action for whatever difference there may be between the amount so paid, and the rates provided by the contract together with costs and such reasonable attorney's fees as shall be allowed by the court. Such contractor or subcontractor shall also be liable to the Department of Labor for 20% of such underpayments and shall be additionally liable to the laborer, worker or mechanic for punitive damages in the amount of 2% of the amount of any such penalty to the State for underpayments for each month following the date of payment during which such underpayments remain unpaid. Where a second or subsequent action to recover underpayments is brought against a contractor or subcontractor and the contractor or subcontractor is found liable for underpayments to any laborer, worker, or mechanic, the contractor or subcontractor shall also be liable to the Department of Labor for 50% of the underpayments payable as a result of the second or subsequent action, and shall be additionally liable for 5% of the amount of any such penalty to the

> State for underpayments for each month following the date of payment during which the underpayments remain unpaid. The Department shall also have a right of action on behalf of any individual who has a right of action under this Section. An action brought to recover same shall be deemed to be a suit for wages, and any and all judgments entered therein shall have the same force and effect as other judgments for wages. The action shall be brought within 5 years from the date of the failure to pay the wages or compensation. At the request of any laborer, workman or mechanic employed by the contractor or by any subcontractor under him who is paid less than the prevailing wage rate required by this Act, the Department of Labor may take an assignment of such wage claim in trust for the assigning laborer, workman or mechanic and may bring any legal action necessary to collect such claim, and the contractor or subcontractor shall be required to pay the costs incurred in collecting such claim.

VI. STATEMENT OF FACTS

In their verified Complaint for Failure to Pay Prevailing Wages, Plaintiffs alleged that they worked as tree planters for Moore Landscapes. (App. 1, Op. ¶ 1). They further alleged that Moore Landscapes had entered into certain contracts with the Chicago Park District, beginning in 2012. *Id*. Each Plaintiff alleged that they worked as tree planters and performed work called for under the agreements between Moore Landscapes and the Park District.

As reflected by the language of the statute, Illinois Department of Labor is authorized to enforce the Prevailing Wage Act under Sections 4, 6 and 11 of the Act. The Illinois Department of Labor has published guidance to public bodies on the meaning of the word "stipulation" under the Act and what steps public bodies must take to comply with their obligations under Section 4 of the Act. Specifically, the Department of Labor has stated in public guidance:

> A Public Body does not comply with the requirements of the Act by providing a general statement to the effect that the contractor must comply with all applicable laws or stating that the project is subject to the Prevailing Wage Act if applicable. The statement required by the Public Body under the Act must be a statement that states specifically the project is or is not subject to the provisions of the Prevailing Wage Act.

Prevailing Wage Public Body FAQ, Ill. Dep't of Labor, https://www2.illinois.gov/idol/FAQs/Pages/public-body-faq.aspx In addition, the Department of Labor has published sample language for public bodies to refer to as a guide for how to include a prevailing wage stipulation into public works contracts. This sample language states:

> This contract calls for the construction of a "public work," within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/.01 et seq. ("the Act"). The Act requires contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the current "prevailing rate of wages" (hourly cash wages plus amount for fringe benefits) in the county where the work is performed. The Department publishes the prevailing wage rates on its website at http://labor.illinois.gov/. The Department revises the prevailing wage rates and the contractor/subcontractor has an obligation to check the Department's web site for revisions to prevailing wage rates. For information regarding current prevailing wage rates, please refer to the Illinois Department of Labor's website. All contractors and subcontractors rendering services under this contract must comply with all requirements of the Act, including but not limited to, all wage requirements and notice and record keeping duties.

Ill. Dep't of Labor, Public Body Sample Language, https://www2.illinois.gov/idol/Laws-Rules/CONMED/Documents/contract.pdf

The Park District contracts at issue each contained similar references to prevailing wages within the documents. The first contract, stated only that Moore Landscapes would pay prevailing wages "where applicable." (C 46; App. 2, Op. ¶ 5). The second agreement also did not include a stipulated pay rate applicable to employees engaged in such work. *Id*. The third agreement contained the identical prevailing wage provision as the other two agreements, *i.e*., the contract did not include a stipulated pay rate covering Plaintiffs or anyone else. *Id*. Further, the language contained in these contracts was substantively identical to the type of language that the Illinois Department of Labor discussed in the

above-quoted FAQ, and that the agency advised was not a stipulation within the meaning of the Prevailing Wage Act.

In addition, in one of the contracts at issue, the Park District enclosed an Illinois Department of Labor FAQ document that advised landscaping companies that landscaping work often is not covered by prevailing wage requirements. (App. 3, Op. ¶ 6; App. 151-152). Among other things, this FAQ document stated that for purposes of the Prevailing Wage Act, landscaping work that is not being performed in conjunction with a project otherwise covered by the Act or that does not involve hardscape work is outside of the scope of the Act. *Id*. Such work includes, but is not limited to, tree planting when the tree is replacing a diseased, damaged, or hazardous tree. *Id*. Thus, the Park District's contract specifically advised Moore Landscapes that prevailing wages would not need to be paid when its employees, including the plaintiffs, were planting trees to replace diseased, damaged, or hazardous trees. Plaintiffs attested in response to Defendant's motion to dismiss that the work at issue included the replacement of diseased trees. (C 146-163).

In its ruling on Moore Landscapes' motion to dismiss, the Circuit Court held that the contracts at issue did not contain stipulations requiring the payment of prevailing wages. (App. 3, Op. ¶ 6). The Circuit Court's ruling was based on the above-quoted guidance from the Illinois Department of Labor. (App. 7-8, Op. ¶ 19). The Circuit Court noted that the Department was authorized to enforce the Act, and relied on the Department's guidance to determine that none of the contracts contained stipulations. The Circuit Court further held that because Section 11 of the Act only provides private parties with a claim for the difference between a stipulated pay rate and the amount actually

paid, the absence of a stipulation meant that Plaintiffs could not bring a claim under the Act. (App. 15).

The Appellate Court held that the Circuit Court correctly determined that the contracts underlying Plaintiffs claims did not contain stipulations to pay Plaintiffs at a prevailing wage rate. (App. 9, Op. ¶ 22). The Appellate Court also correctly recognized that not all landscaping work is covered by the Act and that the question of whether landscaping work must be paid at a prevailing wage rate is a fact-specific issue involving the nature of the work being performed. (App. 11, Op. ¶ 25). Nevertheless, the Appellate Court held that Plaintiffs stated a claim under Section 11 based on their allegations that the prevailing wage should have applied to the work that they performed, irrespective of the terms of the underlying contracts. (App. 9-11, Op. ¶¶ 22, 25). The Appellate Court reversed the Circuit Court's dismissal of the case on these grounds.

VII. ARGUMENT

A. BECAUSE THE CONTRACTS AT ISSUE DID NOT CONTAIN STIPULATIONS REQUIRING MOORE LANDSCAPES TO PAY PREVAILING WAGES, THE PLAIN AND UNAMBIGUOUS LANGUAGE OF SECTION 11 OF THE PREVAILING WAGE ACT DOES NOT PROVIDE PLAINTIFFS WITH A REMEDY.

1. Because Section 4 Of The Prevailing Wage Act Authorizes Only The Illinois Department Of Labor To Enforce The Act When A Public Body Fails To Include A Stipulation In The Contracts And Section 11 Only Authorizes Private Parties To Enforce The Terms Of A Contractual Stipulation, The Appellate Court Erred By Allowing For A Private Right Of Action, Contrary To The Plain Terms Of The Act And Within The Context Of The Statute.

In its decision, the Appellate Court held that the contracts at issue did not contain stipulations: "the contract . . . failed to comply with the . . . [Prevailing] Wage Act." Plaintiffs have not meaningfully challenged that the Circuit Court correctly determined that the agreements did not contain stipulations. Nor did Plaintiffs challenge that the

Circuit Court was correct in relying on the interpretation of "stipulation" provided by the Illinois Department of Labor, quoted above. Because Plaintiff did not dispute this before the Circuit Court (C 139) or challenge this aspect of the Circuit Court's decision on appeal, Plaintiffs have waived the issue. *See United Legal Foundation v. Pappas*, 2011 IL App (1st) 093470, ¶ 15 ("Bare contentions without argument or citation to relevant authority do not merit consideration on appeal."); *Rosier v. Cascade Mt., Inc.*, 367 Ill. App. 3d 559, 568 (1st Dist. 2006) (arguments "not supported by adequate legal reasoning and citation to supporting authority" would not be considered).

However, although the Appellate Court correct determined that the contracts did not contain a stipulation within the meaning of Section 4 of the Act, the Appellate Court also held (erroneously) that the failure to include a stipulation in the contracts at issue "has no effect on the plaintiffs' right of action for prevailing wages under the [Prevailing] Wage Act." The Appellate Court further held that a plaintiff can state a claim under Section 11 of the Act merely by alleging having performed work that the plaintiff claims was subject to prevailing wage requirements, without reference to the requirements of a contract.

The Appellate Court correctly determined that the contracts at issue did not include a stipulation to pay laborers (such as Plaintiffs) prevailing wages. (App. 7-9, Op. ¶¶ 19, 22). Under Section 4(e) of the Act, a public body is required to include in public works contracts stipulations for the contractor to pay prevailing wages. 820 ILCS 130/4(e). By taking this step, the contract confirms the public body's understanding that the work to be performed is covered by the Act and that the contractor was on notice that it was required to pay prevailing wages (having expressly agreed to do so).

Nevertheless, the Appellate Court's interpretation of the Act cannot be reconciled with the plain language contained in Section 11. The Appellate Court did not interpret the Act based on the plain meaning of Section 11. The Appellate Court also failed to consider the language used in Section 11 within the context of the provisions of the Act on the whole, as required by controlling decisions of this Court. Section 11 of the Act authorizes certain private parties, namely, laborers, workers, or mechanics, to bring a claim when a contractor stipulated to pay prevailing wages, but did not pay the stipulated rate. 820 ILCS 130/11. The only remedy provided under these circumstances includes the difference between the rate the contractor stipulated to pay and what the contractor actually paid. *Id*. Specifically, Section 11 states, in its pertinent part:

> Any laborer, worker or mechanic employed by the contractor or by any sub-contractor under him who is paid for his services in a sum less than the stipulated rates for work done under such contract, shall have a right of action for whatever difference there may be between the amount so paid, and the rates provided by the contract together with costs and such reasonable attorney's fees as shall be allowed by the court.

820 ILCS 130/11. This private party claim can be asserted against the contractor, but not the public body (which did not employ the laborers, workers, or mechanics). *See id*. Moreover, under the narrow private right of action provided for in Section 11, because the contractor necessarily stipulated to pay prevailing wages, the parties' private dispute will not require that the Circuit Court determine whether the Act actually required the payment of prevailing wages. Section 4 of the Act authorizes the Illinois Department of Labor, and not private parties, to conduct an audit to determine whether prevailing wages should have been paid in situations where the public body did not include a stipulation in the contract. By contract, the private right of action set forth in Section 11 is a simple,

straightforward claim that is akin to a third-party beneficiary claim under an otherwise enforceable contract.

When, as is the case here, the public body did not include in the contract a stipulation under Section 4(e), the questions presented by a claim for prevailing wages necessarily include whether the Act even applies to the work performed by a private party laborer, worker, or mechanic. By way of example, in their complaint, Plaintiffs tacitly admitted that the applicability of the Act could not be presumed in this case based on the fact that the Chicago Park District attached to one of the contracts a FAQ Document prepared by the Illinois Department of Labor in which the Department described certain instances when prevailing wages were not required for landscaping work. (App. 3, Op. ¶ 6). Based on the Department's FAQ document, the tree planting Plaintiffs claim to have performed is not covered by the Act when the trees are replacing hazardous, dead, or diseased trees. *Id*.

The Appellate Court's ruling incorrectly suggests that a trial court can determine the applicability of the Act in the absence of a stipulation through a private party claim. To the contrary, Section 11 does not authorize a private party to assert a claim that requires a determination of whether prevailing wages should have been paid by a contractor. Rather, a claim is only permitted when the public body notified the contractor that prevailing wages were required and obtained a stipulation from the contractor governing the payment of prevailing wages. This is obviously an important consideration when the claims asserted by Plaintiff could require the Circuit Court to determine what percentage, if any, of the scope of the work performed by Plaintiffs should have been paid at the prevailing wage, including whether or how to interpret the Illinois Department

of Labor's FAQ guidance on applying prevailing wage requirements to the landscape industry and whether (and how much) of the work performed by Plaintiffs was replacing dead, diseased, or hazardous trees in various parks located in the City of Chicago to determine whether the prevailing wage applied, if the Appellate Court's erroneous interpretation of the Act were allowed to stand (which it should not).

In addition, as is reflected by the Act's provisions, the legislature contemplated that a public body may not always include a prevailing wage stipulation in a public works contract. When the contract does not include a stipulation, Section 6 of the Act authorizes only the Illinois Department of Labor to enforce the Act. Further, Section 4(g) authorizes only the Department to investigate in response to a complaint directed to the Department. Under the executive authority given to it under the Act, the Department is required to determine whether a public body was required to include a stipulation, but did not do so. 820 ILCS 130/4(g). Thus, unlike a private party claim under Section 11, the Act authorizes the Department to conduct an audit to determine whether the public body and the contractor complied with their respective duties under the Act. When the public body was required to include a stipulation under Section 4(e), but did not, the Act provides that the contractor remains responsible for paying laborers, workers, and mechanics the difference between the applicable prevailing wage and what was actually paid. 820 ILCS 130/4(g). However, any penalties, fines or interest that may apply would be assessed against the public body, if the Department determined that the public body failed to comply with Section 4(e). 820 ILCS 130/4(g). In addition, unlike in a claim asserted by a private litigant under Section 11, a contractor cannot be required to pay the attorneys' fees of a private party in a claim brought by the Department under Section 4(g) of the

Act. For these reasons, in a case such as this, when the public body does not include a stipulation in a contract, the potential liabilities of the contractor are significantly narrower than the remedies afforded to private parties under Section 11 when a contractor may have disregarded a contractual stipulation to pay prevailing wages.

In its Order, the Appellate Court held that a private party may bring a claim under Section 11 of the Act for the difference between the prevailing wage and the amount paid, even in the absence of a stipulation. (App. 11, Op. ¶ 25). Because Section 11 does not provide for a claim based on the difference between the prevailing wage and what the contractor paid, while Section 4(g) expressly provides this remedy, the Appellate Court violated well-settled case law of this Court that legislation must be interpreted based on the plain, unambiguous language of the statute. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 91 (1992). "The best evidence of legislative intent is the language used in the statute itself; which must be given its plain and ordinary meaning." *Cinkus v. Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 216, 886 N.E.2d 1011, 1021 (2008). A court's role is to effect the intent of the legislature based on the provisions of the statute itself. *Certain Taxpayers v. Sheahen*, 45 Ill. 2d 75, 84 (1970). "When the statutory language is clear, we must apply the statute as written . . . ." *Jackson v. Board of Election Commissioners*, 2012 IL 111928, ¶ 48.

The Appellate Court violated these holdings because the court impermissibly changed the nature of the claim permitted under Section 11 from one in which a private party may enforce a contractual stipulation into one in which the private party may, in effect, enforce the Act's requirements against a contractor, regardless of the terms of the underlying contract. As discussed above, Section 11 of the Act is not ambiguous and does

not contemplate a claim in which a plaintiff must first demonstrate the applicability of the Act to the work that had been performed, because a Section 11 claim is limited only to situations in which the contractor had already stipulated to pay prevailing wages. Nevertheless, the Appellate Court determined (App. 9, Op. ¶ 22) that a plaintiff may assert a claim that requires that a circuit court first determine whether prevailing wages needed to be paid, even when the legislature expressly limited the claim to be based on a stipulated pay rate. *See* 820 ILCS 130/11. The Appellate Court erred because its ruling is not based on the actual language of Section 11. *See People ex rel. Director of Corrections v. Booth*, 215 Ill. 2d 416, 426, 830 N.E.2d 569, 574 (2005) (The Court's authority to interpret statutes "does not give us the power to rewrite the law or depart from its plain language.").

In addition the Appellate Court's ruling violated this Court's instruction that a statute should be evaluated as a whole, with each provision being construed in connection with every other section. *Miller v. Department of Registration & Education*, 75 Ill. 2d 76, 81 (1979). "[E]ach word, clause, and sentence of a statute must be given a reasonable construction, if possible, and should not be rendered superfluous." *In re Goesel*, 2017 IL 122046, ¶ 13. As noted previously, under the enforcement scheme created by the legislature, when a contact does not include a stipulation, the Illinois Department of Labor is authorized to investigate in response to a complaint and determine whether a laborer, worker, or mechanic should have been paid prevailing wages. 820 ILCS 130/4(g). The Appellate Court's decision impermissibly ignores that this remedy exists under the statute. Therefore, the Appellate Court's Order fails to reconcile that the legislature provided for a claim based on determining the application of prevailing wages

in Section 4(g), but only provided for a claim based on a stipulated pay rate in the remedies provided for in Section 11 of the Act. As a result, the Appellate Court's Order violated well-established precedents from this Court that required the Appellate Court to base its ruling on the language of Section 11 itself, without judicially reconstructing unambiguous terms. The Appellate Court further erred because it impermissibly rendered superfluous the distinctions created by the legislature between the remedies provided in Section 4(g) and those provided in Section 11. Instead, the Court impermissibly interpreted the meaning of Section 11 by referring to the broad policy statements set forth in Section 1 of the Act.

Lastly, the Appellate Court's ruling is contrary to well-settled holdings of this Court governing statutory interpretation. In particular, the Appellate Court's interpretation of the Act violates the well-established principle of statutory construction of "*expressio unius est exclusio alterius*," that is, "the expression of one thing is the implied exclusion of the other." Black's Law Dictionary 602 (7th ed.1999). Consistent with this canon of construction, this Court has held: "Where a statute lists the things to which it refers, there is an inference that all omissions should be understood as exclusions." *Metzger v. DaRosa*, 209 Ill. 2d 30, 44 (2004) (*citing Burke v. 12 Rothschild's Liquor Mart, Inc.*, 148 Ill. 2d 429, 442 (1992)). "This rule of statutory construction is based on logic and common sense. It expresses the learning of common experience that when people say one thing they do not mean something else. The maxim is closely related to the plain language rule in that it emphasizes the statutory language as it is written." *Metzger*, 209 Ill. 2d at 44. The Court "cannot add provisions or limitations not expressed by the legislature." *Whitaker v. Wedbush Securities, Inc.*, 2020 IL 124792,

¶ 30.

As reflected by the differences between Section 4(g) and Section 11 noted above, the legislature clearly understood how to provide a remedy under the Act based on the difference between the applicable prevailing wage and the amount paid to a laborer. Had the legislature intended to provide a remedy under Section 11 for the difference between the prevailing wage and actual wages, the legislature would have drafted Section 11 using the same words that it did in Section 4(g). Despite these clear distinctions, the Appellate Court held that Plaintiffs were not required to establish the existence of a stipulation in order to state a claim for relief under Section 11. Rather, the Appellate Court erroneously held that Plaintiffs could establish the applicable prevailing wage, even in the absence of a stipulation, which improperly rendered superfluous the legislature's inclusion of the words "stipulated rate" in Section 11. For each of these reasons, the Appellate Court improperly disregarded the difference between the remedies the legislature created in Section 4(g) and those created in Section 11, in violation of this Court's clear instructions on how the court must interpret a statute. For these reasons, the Court should reverse the Appellate Court's decision and affirm the dismissal order of the Circuit Court.

2. Because A Claim Under Section 11 Of The Act Only Authorizes Private Parties To Enforce The Terms Of A Stipulation And No Stipulation Was Included In The Contracts At Issue, The Appellate Court Erred By Granting Plaintiffs With A Statutory Remedy That The Legislature Did Not Provide For In The Carefully Crafted Enforcement Mechanisms Set Forth In The Prevailing Wage Act.

The Appellate Court's decision violated the court's constitutional role by creating a remedy in favor of Plaintiffs when the legislature did not provide one in Section 11 of the Act. Article 2, Section 1 of the Illinois Constitution states: "The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to

another." Thus, the Illinois Constitution requires that when statutory language "is certain and unambiguous the only legitimate function of the courts is to enforce the law as enacted by the legislature." *Certain Taxpayers v. Sheahen*, 45 Ill. 2d 75, 84, 256 N.E.2d 758, 764 (1970). This Court's authority "to interpret statutes does not give us [the courts] the power to rewrite the law or depart from its plain language." *People ex rel. Director of Corrections v. Booth*, 215 Ill. 2d 416, 426 (2005). The Court "may not depart from the plain language of a statute by reading in exceptions, limitations, or conditions conflicting with the expressed legislative intent." *Whitaker*, 2020 IL 124792, at ¶ 16; *see also Cement Masons Pension Fund, Local 803 v. William A. Randolph, Inc.*, 358 Ill. App. 3d 638, 645 (1st Dist. 2005).

Rather, courts must interpret statutes based on the language used by the legislature, solely for the purpose of giving effect to the intent of the legislature. *See Illinois Power Co. v. Mahin*, 72 Ill. 2d 189, 194 (1978) ("[T]he language of the statutes must be given its plain and ordinary meaning."). Consistent with the judicial role in this framework, the Court has observed: "There is no rule of construction which authorizes a court to declare that the legislature did not mean what the plain language of the statute imports." *Id*. (quoting *Western National Bank v. Village of Kildeer*, 19 Ill. 2d 342, 350 (1960).) "This cardinal rule applies even though the statutory language may be considered unwise or as impairing the statute as a whole." *Bridgestone/Firestone, Inc. v. Aldridge*, 179 Ill. 2d 141, 154 (1997); *see also Kozak v. Retirement Board of the Firemen's Annuity & Benefit Fund of Chicago*, 95 Ill. 2d 211, 220 (1983) (statutes "should not be rewritten by a court to make them consistent with the court's idea of orderliness and public policy.").

As discussed in Section A, previously, within the provisions of the Act, the legislature expressly considered two scenarios: one in which the public body included a stipulation requiring the contractor to pay prevailing wages in accordance with Section 4, and, alternatively, one in which the public body did not include a stipulation. When the contract includes a stipulation, Section 11 of the Act clearly permits a private party to assert a claim for the difference between the stipulated pay rate and what had been paid. 820 ILCS 130/11. However, when the contract did not include a stipulation, the Illinois Department of Labor is authorized to enforce the Act against the contractor and the public body under Section 4(g). 820 ILCS 130/4(g). Plaintiffs have not argued that these provisions are at all ambiguous. (C 138-139; App. 33-34; App 62). Plaintiffs may not do so at this stage, having waived the opportunity to do so previously. *See Sylvester v. Chicago Park District*, 179 Ill. 2d 500, 507 (1997) (issues not raised before the trial court cannot be raised on appeal).

Significantly, the available remedies under Section 11 and Section 4(g) differ in that under Section 4(g), the Illinois Department of Labor may enforce the Act against the public body, while the public body is not a proper party under a Section 11 claim. *Compare* 820 ILCS 130/4(g) (Illinois Department of Labor may enforce the Act against a contractor and the public body), *with* 820 ILCS 130/11 (providing for enforcement against the contractor and subcontractor). Further, Section 4(g) differs from Section 11 in that, the contractor is protected from being required to pay interest, penalties or fines when the public body did not include a stipulation in the contract. 820 ILCS 130/4(g) ("If proper written notice was not provided to the contractor by the public body or other entity, the Department of Labor shall order the public body or other entity to pay any

interest, penalties or fines that would have been owed by the contractor if proper written notice were provided."). Plaintiffs seek these remedies from Moore Landscapes in this case, which is contrary to the legislature's intent under the circumstances, as reflected by Section 4(g).

The Appellate Court erred by failing to interpret the Act in a manner consistent with its terms, but the Appellate Court only did so after correctly recognizing that the contracts at issue did not contain stipulations. The Appellate Court's determination that no stipulation was included in the contracts should have ended the Appellate Court's analysis, as Section 11 only allows for a claim to recover what a contractor should have paid in accordance with a stipulation. 820 ILCS 130/11. Nevertheless, the Appellate Court incorrectly held that a private party can assert a claim to be paid at the applicable prevailing wage, even when the public body did not include a stipulation in the contract. This ruling is not consistent with Section 11, which expressly provides that a claim under Section 11 arises when the contractor pays "less than the stipulated rate" and, in such a case, the claim is limited to "whatever difference there may be between the amount so paid, and ***the rates provided by the contract*** . . ." 820 ILCS 130/11 (emphasis added). While the Appellate Court held that a private party may state a claim under Section 11 by simply alleging that a contractor or subcontractor paid less than the applicable prevailing wage, the plain language of Section 11 does not permit such a claim in the absence of a contractual stipulation. The legislature stated in Section 11 that the claim that could be asserted was based on a contractor's or subcontractor's failure to comply with a stipulation, and not on whether the plaintiffs might have been entitled to prevailing wages

under the terms of the Act itself. Accordingly, the Appellate Court erred by creating a right of action under Section 11 of the Act that was not provided for by the legislature.

The Appellate Court further disregarded that the legislature has provided a remedy under the Act for a scenario in which prevailing wages should have been paid, but the public body did not include a stipulation with the contractor, as set forth in Section 4(e) of the Act. Section 6 of the Act authorizes the Illinois Department of Labor to investigate and enforce the Act. 820 ILCS 130/6. Section 4(g) provides that the Department may conduct an audit of both a public body and the contractor. 820 ILCS 130/4(g). As part of its investigation, the Department may consider, among other things, whether the public body included a stipulation required by the Act in the agreement with the contractor. *Id*. As noted, when the public body did not include a stipulation when prevailing wages should have been paid, the contractor may be required to pay the difference between the prevailing wage rate and what it actually paid, while the public body would be responsible for fines, penalties or interest assessed by the Department. *Id*. Unlike in Section 11, which provided a claim for the difference between a stipulated rate and wages paid, Section 4(g) expressly stated that the remedy available under this provision was the difference between the applicable prevailing wage and the wages paid. *Compare* 820 ILCS 130/4(g) ("For the purposes of this subsection, back wages shall be limited to the difference between the actual amount paid and the prevailing rate of wages required to be paid for the project."), *with* 820 ILCS 130/11 ("Any laborer . . . who is paid for his services in a sum less than the stipulated rates . . ., shall have a right of action for whatever difference there may be between the amount so paid, and the rates provided by the contract . . .").

The Appellate Court's ruling cannot be reconciled with the distinctions drawn by the legislature between Section 4(g) and Section 11, and impermissibly invites an influx of disputes that the legislature did not intend to be heard by the courts. Based on its disregard of these distinctions, the Appellate Court's decision clearly violates the Separation of Powers Doctrine set forth in Article 2 of the Illinois Constitution. Only the legislature may create a remedy under the Act. Further, courts lack the constitutional authority to render decisions that are not authorized by statute. *See In re D.W.*, 214 Ill. 2d 289, 309 (2005) ("[A] circuit court disposition not authorized by statute is void."). For these additional and independent reasons, the Court should reverse the decision of the Appellate Court and affirm the Circuit Court's order that dismissed Plaintiffs' claims.

3. Because The Illinois Department Of Labor Has Exclusive Enforcement Authority Under The Act When The Public Body Did Not Require The Contractor To Stipulate To Paying Prevailing Wages, The Appellate Court Erred By Authorizing The Judicial Branch To Take Jurisdiction Over A Claim Within The Authority Of The Executive Branch.

In its Opinion, the Appellate Court improperly ignored the role that the Illinois Department of Labor has under the Act to enforce its requirements. Plaintiffs, in their Answer to Moore Landscapes' Petition, also ignore the Department's role in enforcing the Act by inaccurately claiming that the Act would somehow be "toothless" if the Court were to find that private parties could bring suit under Section 11 in the absence of a stipulation with the public body. This simply is not true. The legislature authorized the Department to enforce the Act under Section 4, 6 and 11, giving it the sole right to determine whether a public body and a contractor have acted in compliance with the Act and whether wages are due. 820 ILCS 130/4, 6, 11. Because the Appellate Court held that private parties can assert a claim under Section 11 in a case where the public body did not

include a stipulation in the contract, the Court's ruling impermissibly usurps the Illinois Department of Labor's statutorily assigned duty to investigate and enforce the Act pursuant to Sections 4, 6, and 11 of the Act. 820 ILCS 130/4, 6, 11.

The Illinois Constitution provides that the executive branch shall have the "supreme executive power, and shall be responsible for the faithful execution of the laws." Ill. Const. 1970, Art. V, Sec. 8. As discussed previously, the Act authorizes the Department, which is a part of the executive branch, to enforce the Act in the scenario presented in this case. In situations, like this one, when the public body did not include a stipulation in a contract, the Department is authorized to audit both the public body and the contractor to determine whether prevailing wages were required. 820 ILCS 130/4(g). It is well-settled in Illinois that governmental entities cannot delegate to others any functions that have been exclusively assigned to them. *Bd. of Educ. of the City of Chicago v. Chicago Teachers Union, Local 1, et al.*, 88 Ill. 2d 63 (1981) (power of school board to control budgets could not be delegated); *Bd. of Tr. of Junior Coll. Dist. No. 508, County of Cook v. Cook County College Teachers Union, Local 1600, et al.*, 62 Ill. 2d 470 (1976) (power of junior college to grant or deny promotions could not be delegated and is not subject to arbitration); *Illinois Educ. Ass'n v. Board of Educ.*, 62 Ill. 2d 127, 130-31 (1975) (power to appoint and terminate teachers may not be delegated); *People v. Tibbitts,* 56 Ill. 2d 56, 58 (1973) (real estate non-solicitation law could not be delegated to an administrative body); *County of Will v. Local 1028, Will County Employees Union, American Federation of State, County and Municipal Employees, AFL-CIO*, 79 Ill. App. 3d 290 (1979) (county's statutory power and duty to set salaries for county employees was found to be nondelegable).

In this case, because the contracts did not include stipulations, the Act vested the Illinois Department of Labor with the non-delegable duty to investigate whether the contract complied with the Act and whether prevailing wages should have been paid in response to a complaint. 820 ILCS 130/4, 6, 11. Although nothing in the record suggests that Plaintiffs sought the assistance of the Illinois Department of Labor prior to filing suit, whether the Department had elected to exercise its authority to enforce the Act does not create a justiciable issue for the courts. *See Committee for Educ. Rights v. Edgar*, 174 Ill. 2d 1, 28-29 (1996) (exercise of discretion by one branch of government is a political question that is not justiciable). Where discretionary power is vested in an executive official, the courts "will not pass upon the wisdom or propriety of his executive act." *Fairbank v. Stratton*, 14 Ill. 2d 307, 314-15 (1958). Based upon the carefully constructed enforcement mechanisms contained in the Act, the Court should recognize that the Appellate Court impermissibly deputized private parties and the Circuit Court to enforce portions of the Act that were within the jurisdiction of the Department.

As noted previously, in a claim brought by a private party, a court is not authorized to determine whether the Act applied to the work performed. The relevant portion of Section 11 only authorizes a circuit court to exercise jurisdiction when the contract stipulated to the payment of prevailing wages. A circuit court cannot assume the powers that were granted to the Illinois Department of Labor under Section 4 of the Act, and the Appellate Court may not grant such powers. For these reasons as well, the Circuit Court correctly determined that it lacked jurisdiction over a claim brought under the Act when the contracts undisputedly did not include stipulations within the meaning of Section 4(e) of the Act. Because the Appellate Court's decision violates the non-

delegation doctrine of the Illinois Constitution, Moore Landscapes respectfully requests that the Court reverse the Appellate Court's decision.

This Court has tacitly recognized the inherent tension created when private parties pursue private party actions when the issue in question is within the jurisdiction of an executive agency. *See, e.g.*, *Citizens Opposing Pollution v. ExxonMobil Coal U.S.A.*, 2012 IL 111286, ¶ 42 (refusing to allow a private right of action challenging an issue that fell within the permitting authority of the Illinois Department of Natural Resources); *Metzger*, 209 Ill. 2d at 39 ("[P]roviding an implied right of action for state employees against the state would deprive the state of its independent ability to manage its employees and to decide whether an action is retaliation or appropriate management, and would instead vest that power in a court."); *Fisher v. Lexington Health Care*, 188 Ill. 2d 455, 460-467 (1999) (refusing to allow a private right of action when, among other considerations, the statute authorized the Illinois Department of Public Health enforcement). "Reviewing courts have a duty to construe a statute to preserve its constitutionality whenever reasonably possible." *Bartlow v. Costigan*, 2014 IL 115152, ¶ 18. As reflected by *Citizens Opposing Pollution*, *Metzger*, and *Fisher*, the Court preserves the balance between private judicial remedies and executive branch enforcement by refusing to read statues to provide private remedies when the legislature authorized enforcement through the executive branch. The Court should affirm the decision of the Circuit Court, because the Circuit Court correctly determined that the type of claim Plaintiffs asserted falls within the exclusive enforcement authority of the Illinois Department of Labor.

B. Conclusion

For each of the foregoing reasons, Defendant-Appellant respectfully requests that

the Court enter an Order reversing the decision of the Appellate Court and affirming the Circuit Court's entry of an order dismissing Plaintiffs' claims in their entirety.

Dated: November 4, 2020

Respectfully submitted,

MOORE LANDSCAPES, LLC,
Defendant-Appellant

By /s/ Peter J. Gillespie
Peter J. Gillespie

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(l) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 8,071 words.

By: /s/ *Peter J. Gillespie*

CERTIFICATE OF SERVICE

PLEASE TAKE NOTICE that on November 4, 2020, I filed in the above-captioned action the Brief of Appellant Moore Landscapes, LLC with the Clerk of the Supreme Court of Illinois by electronic means. On that same day, I also caused copies of the aforementioned documents to be served by Electronic Mail upon the following persons:

Robert Habib
Law Offices of Robert Habib
77 W. Washington, Suite 1506
Chicago, Illinois 60602
Robhabib77@gmail.com

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Notice of Filing and Certificate of Service are true and correct.

November 4, 2020 /s/ *Peter J. Gillespie*

Peter J. Gillespie
Brian K. Jackson
Laner Muchin, Ltd.
515 North State Street, Suite 2800
Chicago, Illinois 60654
(312) 467-9800
(312) 467-9479 (fax)
pgillespie@lanermuchin.com
bjackson@lanermuchin.com

Attorneys for Moore Landscapes, LLC

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Carolyn Taft Grosboll
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NO. 126139
IN THE ILLINOIS SUPREME COURT

MOORE LANDSCAPES, LLC, Defendant-Appellant, v. SAMUEL VALERIO, JOSE PAZ, RUBEN GARCIA BARDOMIANO PAZ, EVARISTO VALERIO, LUIS MONDRAGON, SERGIO APARICIO, RAUL BERMUDEZ, RODRIGO VALERIO, JAVIER MORA, MARCOS HUERTA, JAIME MORA, Plaintiffs-Appellees.	)	On Appeal from the Order entered by the Appellate Court of Illinois, First Judicial District, No. 1-19-0185, on March 26, 2020, rehearing denied on April 22, 2020 There Heard on Appeal from the Order of The Circuit Court of Cook County, Case No. 2018 L 009656, entered January 25, 2019 ORAL ARGUMENT REQUESTED

APPENDIX TABLE OF CONTENTS

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2020 IL App (1st) 190185
No. 1-19-0185
Opinion filed March 26, 2020
Fourth Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

SAMUEL VALERIO, JOSE PAZ, RUBEN GARCIA, BARDOMIANO PAZ, EVARISTO VALERIO, LUIS MONDRAGON, SERGIO APARICIO, RAUL BERMUDEZ, RODRIGO VALERIO, JAVIER MORA, MARCOS HUERTA, and JAIME MORA,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	
v.	)	No. 18 L 9656
MOORE LANDSCAPES, LLC,	)	Honorable Margaret Ann Brennan,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court, with opinion.
Presiding Justice Gordon and Justice Burke concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiffs, 12 landscape laborers, filed suit against defendant, Moore Landscapes, LLC, for failing to pay them the prevailing wage for the tree planting work they performed for defendant pursuant to its contracts with the Chicago Park District. The trial court dismissed plaintiffs' complaint, ruling that they did not have a right of action under section 11 of the Prevailing Wage Act (Wage Act) (820 ILCS 130/11 (West 2018)) because the contracts between defendant and the

Chicago Park District failed to comply with the Wage Act's requirement to stipulate whether the project was subject to the provisions of the Wage Act.

¶ 2 On appeal, plaintiffs argue that the trial court erroneously dismissed their complaint because their work as landscape laborers was covered by the Wage Act and they are entitled to recover unpaid wages and punitive damages. Plaintiffs contend that the trial court failed to consider the strong public policy favoring laborers, workers, and mechanics receiving the prevailing wage for their work and erroneously ruled that defendant had discretion to pay plaintiffs less than the prevailing wage.

¶ 3 For the reasons that follow, we reverse the judgment of the circuit court.[1]

¶ 4 I. BACKGROUND

¶ 5 In September 2018, plaintiffs filed a complaint against defendant, seeking unpaid wages, punitive damages, prejudgment interest on backpay, and reasonable attorney fees and costs for alleged violations of section 11 of the Wage Act. In their complaint, plaintiffs alleged that they were employed by defendant and worked as tree planters. They also alleged that defendant paid them an hourly rate of $18 instead of the prevailing wage of $41.20 for landscaping and related work, which defendant contractually agreed to perform for the Chicago Park District, a public body. Defendant's three contracts with the Chicago Park District were attached as exhibits to plaintiffs' complaint. Relevant to the issue on appeal, the three contracts contained the same prevailing wage rates provision, which stated:

[1] In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

> "Contractor shall pay all persons employed by Contractor, or its subcontractors, prevailing wages where applicable. As a condition of making payment to the Contractor, the Park District may request the Contractor to submit an affidavit to the effect that not less than the prevailing hourly wage rate is being paid to laborers employed on contracts in accordance with Illinois law."

¶ 6 Defendant filed a motion to dismiss under section 2-619.1 of the Code of Civil Procedure (Code) (725 ILCS 5/2-619.1 (West 2018)). First, defendant argued that the complaint should be dismissed under section 2-619(a)(9) of the Code (*id.* § 2-619(a)(9)), because the right of action available to laborers, workers, and mechanics under section 11 of the Wage Act was limited and did not afford a remedy to plaintiffs since defendant's contracts with the Chicago Park District did not contain a stipulation to pay plaintiffs the laborers' prevailing wage rate of $41.20 per hour. Further, defendant asserted that it had been advised by the Chicago Park District that it did not need to pay prevailing wages for laborers like plaintiffs, who were performing tree replacements. Defendant also asserted the webpage of the Illinois Department of Labor (Department) indicated that some work associated with landscaping—like the replacement of trees due to the removal of diseased or irreparably damaged trees or trees that were a hazard—was not covered by the Wage Act. See *Prevailing Wage Landscaping FAQ*, Ill. Dep't of Labor, http://www2.illinois.gov/idol/FAQs/Pages/Landscaping.aspx (last visited Mar. 10, 2020) [https://perma.cc/R9B4-XFEV].

¶ 7 Second, defendant argued that the complaint should be dismissed under section 2-615 of the Code (725 ILCS 5/2-615 (West 2018)) because plaintiffs failed to allege facts sufficient to support a claim under the Wage Act. Defendant argued that plaintiffs failed to allege facts to

support the inference that they were involved in the type of construction or hardscape work covered by the Wage Act and instead merely asserted conclusory allegations that they were entitled to a prevailing wage because they were employed as tree planters to perform work for a public body.

¶ 8 In their response, plaintiffs argued that (1) they had a clear right to sue defendant under both the contracts and the Wage Act, (2) the Department's webpage showed that tree planters like plaintiffs must be paid the laborer's prevailing wage except for certain exceptions that were not applicable in this case, and (3) plaintiffs' affidavits, which attested to the type of work they performed, established that they were entitled to the prevailing wage for their work. Nine plaintiffs' affidavits were attached as exhibits to this response. According to their affidavits, the plaintiffs' work often involved the original installation of trees; the planting of three to four times as many new trees, often in new unplanted areas, after a couple of diseased or damaged trees had been removed; and the hardscape work of placing stone, rock and brick pavers for patios and outcroppings.

¶ 9 On January 25, 2019, the trial court granted defendant's motion to dismiss plaintiffs' complaint under section 2-619(a)(9) of the Code, ruling that plaintiffs could not pursue a claim under section 11 of the Wage Act because the contract language did not constitute a stipulated rate of payment.

¶ 10 Plaintiffs timely appealed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, plaintiffs argue that the trial court erroneously granted defendant's motion to dismiss their complaint because, accepting as true all the well-pleaded facts in their complaint and all inferences that may reasonably be drawn in their favor, they alleged sufficient facts to support

their right of action under section 11 of the Wage Act for prevailing wages. Specifically, they alleged sufficient facts to show they were entitled to the prevailing wage because they were laborers engaged in the construction of public works and their affidavits established that the landscaping they performed included hardscape work like planting new trees in previously unplanted areas and the placement of pavers for patios and outcroppings. Plaintiffs also argue that the language of the contracts between defendant and the Chicago Park District required defendant to pay them the applicable prevailing wage.

¶ 13 Plaintiffs contend that the trial court, contrary to the clear legislative intent expressed in the plain language of the Wage Act, misconstrued section 11 of the Wage Act to require a contractor and a public body to stipulate in their contract that their project was subject to the provisions of the Wage Act as a prerequisite for laborers to have a right of action for prevailing wages and related damages under section 11. Plaintiffs argue that the trial court's erroneous interpretation of section 11 ignores the public policy in favor of laborers engaged in the construction of public works receiving the prevailing wage. Furthermore, the trial court's erroneous interpretation of section 11 rewards violations of the Wage Act's requirement that the contracts between public bodies and contractors must stipulate whether a project is subject to the provisions of the Wage Act by essentially giving contractors the discretion to pay laborers the prevailing wage.

¶ 14 Defendant argues the trial court properly concluded that plaintiffs' claims against defendant were barred under the provisions of the Wage Act because the contract between defendant and the Chicago Park District—which merely indicated that the prevailing wage would be paid "if applicable"—did not constitute a contractual stipulation to pay prevailing wages.

According to defendant, section 11 of the Wage Act only allows employees to sue for the difference between the amount the employer actually stipulated in the contract would be paid and the amount that actually was paid. Defendant asserts that because the requisite stipulation was not included in the contract, plaintiffs must rely on the Department to enforce the provisions of the Wage Act and pursue any claim on plaintiffs' behalf.

¶ 15 This matter comes before us in the context of an involuntary dismissal of an action based on the defense specified under section 2-619(a)(9) of the Code that the claim is barred by other affirmative matter avoiding the legal effect of or defeating the claim. In reviewing the dismissal of an action under section 2-619 of the Code, we accept as true all well-pleaded facts in plaintiffs' complaint and all inferences that may reasonably be drawn in plaintiffs' favor. *Ferguson v. City of Chicago*, 213 Ill. 2d 94, 96 (2004). The trial court's order granting defendant's 2-619 motion to dismiss presents a question of law, which we review *de novo*. *Feitmeier v. Feitmeier*, 207 Ill. 2d 263, 267 (2003). Additionally, we review *de novo* the issue of statutory construction raised in this appeal regarding the Wage Act. *Id.*

¶ 16 "The primary rule of statutory interpretation is that a court should ascertain and give effect to the intention of the legislature." *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 91 (1992). The legislative intent should be sought primarily from the language used in the statute. *Certain Taxpayers v. Sheahen*, 45 Ill. 2d 75, 84 (1970). The statute should be evaluated as a whole; each provision should be construed in connection with every other section. *Miller v. Department of Registration & Education*, 75 Ill. 2d 76, 81 (1979). "Where the language of the act is certain and unambiguous the only legitimate function of the courts is to enforce the law as enacted by the legislature." *Sheahen*, 45 Ill. 2d at 84.

¶ 17 The stated policy of the Wage Act is that "laborers, workers and mechanics employed by or on behalf of any and all public bodies engaged in public works" shall be paid "a wage of no less than the general prevailing hourly rate as paid for work of a similar character in the locality in which the work is performed." 820 ILCS 130/1 (West 2018). To help aid with compliance, the Department provides a county by county list of the prevailing wages for various trades, including laborers. See *Historical Prevailing Wage Rates*, Ill. Dep't of Labor, https://www2.illinois.gov/idol/Laws-Rules/CONMED/Pages/rates.aspx (last visited Mar. 10, 2020) [https://perma.cc/8QVF-PTAR]. The law defines *public works* as "all fixed works constructed or demolished by any public body, or paid for wholly or in part out of public funds" and includes "all projects financed in whole or in part with bonds, grants, loans, or other funds made available by or through the State or any of its political subdivisions." 820 ILCS 130/2 (West 2018). The law defines *construction* as "all work on public works involving laborers, workers or mechanics. This includes any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented." *Id.*

¶ 18 The public body awarding a contract for public work or the Department "shall ascertain the general prevailing rate of hourly wages in the locality in which the work is to be performed." *Id.* § 4(a). The public body must also cause to be included "in the project specifications and the contract a stipulation to the effect that not less than the prevailing rate of wages as found by the public body or Department or determined by the court on review shall be paid to all laborers, workers and mechanics performing work under the contract." *Id.* § 4(a-1).

¶ 19 According to the Department, a public body does not comply with section 4(a-1) of the Wage Act

> "by providing a general statement to the effect that the contractor must comply with all applicable laws or stating that the project is subject to the [Wage] Act if applicable. The statement required by the Public Body under the [Wage] Act must be a statement that states specifically the project is or is not subject to the provisions of the [Wage] Act." *Prevailing Wage Public Body FAQ*, Ill. Dep't of Labor, https://www2.illinois.gov/idol/FAQs/Pages/public-body-faq.aspx (last visited Mar. 10, 2020) [https://perma.cc/F6X3-E2AY].

The Department even provides sample language public bodies may wish to use in their contracts to comply with the section 4(a-1) stipulation requirement. The sample states, in pertinent part:

> "This contract calls for the construction of a 'public work,' within the meaning of the [Wage] Act [citation]. The [Wage] Act requires contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the current 'prevailing rate of wages' (hourly cash wages plus amount for fringe benefits) in the county where the work is performed." Ill. Dep't of Labor, Public Body Sample Language, https://www2.illinois.gov/idol/Laws-Rules/CONMED/Documents/contract.pdf (last visited Mar. 10, 2020) [https://perma.cc/DR4V-LD5P].

¶ 20 The contractor to whom the contract is awarded must insert into each subcontract and the project specifications "a written stipulation to the effect that not less than the prevailing rate of wages shall be paid to all laborers, workers, and mechanics performing work under the contract." 820 ILCS 130/4(b) (West 2018). "When a contractor has awarded work to a subcontractor without a contract or contract specification, the contractor shall comply with subsection (b) by providing a

subcontractor with a written statement indicating that not less than the prevailing rate of wages shall be paid to all laborers, workers, and mechanics performing work on the project." *Id.* § 4(b-1).

¶ 21 The Wage Act also specifies the manner in which its provisions are to be enforced. In addition to criminal prosecution and suits by the state for injunctive relief (*id.* § 6), the Wage Act also creates a right of action for "[a]ny laborer, worker or mechanic employed by the contractor *** who is paid for his services in a sum less than the stipulated rates for work done under such contract" (*id.* § 11). This right of action is "for whatever difference there may be between the amount so paid, and the rates provided by the contract together with costs and such reasonable attorney's fees as shall be allowed by the court." *Id.* "The Department shall also have a right of action on behalf of any individual who has a right of action under this Section." *Id.*

¶ 22 Applying the principles of statutory construction to the present case, we conclude based on the unambiguous language of the statute that the trial court's interpretation of section 11 of the Wage Act cannot stand. If the project at issue in this appeal was covered by the Wage Act, then the contract between the Chicago Park District and defendant, which stated merely that defendant would pay all employees "prevailing wages where applicable," failed to comply with sections 4(a-1) and 4(b) of the Wage Act. However, any failure by the Chicago Park District and defendant to include in their contract a proper stipulation pursuant to sections 4(a-1) and 4(b) regarding whether the project was or was not subject to the provisions of the Wage Act has no effect on plaintiffs' right of action for prevailing wages under section 11 of the Wage Act. The trial court's interpretation of section 11, contrary to the plain language of the statute and clear legislative intent,

improperly places a limitation on the right of action of any laborer, worker, or mechanic who has been denied a prevailing wage on a public works project covered by the Wage Act.

¶ 23 Therefore, we hold that the trial court erred in dismissing plaintiffs' complaint under section 2-619(a)(9) of the Code as barred under the provisions of section 11 of the Wage Act.

¶ 24 We also conclude that dismissal of plaintiff's complaint would not have been appropriate under section 2-615 of the Code. A section 2-615 motion attacks the legal sufficiency of the complaint by alleging defects on the face of the complaint (*Van Horne v. Muller*, 185 Ill. 2d 299, 305 (1998)), and we review *de novo* an order granting or denying a section 2-615 motion (*Wakulich v. Mraz*, 203 Ill. 2d 223, 228 (2003)). Because a section 2-615 motion is based on the pleadings rather than the underlying facts, the court may not consider affidavits, products of discovery, documentary evidence not incorporated into the pleadings as exhibits, testimonial evidence, or other evidentiary materials. *Barber-Colman Co. v. A&K Midwest Insulation Co.*, 236 Ill. App. 3d 1065, 1068 (1992). In reviewing the sufficiency of a complaint, we accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts (*Ferguson*, 213 Ill. 2d at 96-97) and construe the allegations in the complaint in the light most favorable to the plaintiff (*King v. First Capital Financial Services Corp.*, 215 Ill. 2d 1, 11-12 (2005)). Thus, a cause of action should not be dismissed pursuant to section 2-615 unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery. *Canel v. Topinka*, 212 Ill. 2d 311, 318 (2004). Illinois is a fact-pleading jurisdiction. *Weiss v. Waterhouse Securities, Inc.*, 208 Ill. 2d 439, 451 (2004). "While the plaintiff is not required to set forth evidence in the complaint [citation], the plaintiff must allege facts sufficient to bring a claim within a legally recognized

cause of action [citation], not simply conclusions." *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429-30 (2006).

¶ 25 Work performed by laborers in connection with landscape work may be covered under the Wage Act depending upon the nature of the work. Here, the parties do not dispute that the Chicago Park District was a public body and the contracted work was a public works project. Plaintiffs' allegations in their complaint—that they were employed by defendant and worked planting trees and performing landscaping and related work for the Chicago Park District—was sufficient to survive defendant's 2-615 motion to dismiss.

¶ 26 III. CONCLUSION

¶ 27 For the foregoing reasons, we reverse the judgment of the circuit court that granted defendant's motion to dismiss plaintiffs' complaint and remand this cause for further proceedings.

¶ 28 Reversed and remanded.

No. 1-19-0185	
Cite as:	*Valerio v. Moore Landscapes, LLC*, 2020 IL App (1st) 190185
Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 18-L-9656; the Hon. Margaret Ann Brennan, Judge, presiding.
Attorneys for Appellant:	Robert Habib and Brunell Donald-Kyei, both of Chicago, for appellants.
Attorneys for Appellee:	Peter J. Gillespie and Brian K. Jackson, of Laner Muchin, Ltd., of Chicago, for appellee.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

SAMUEL VALERIO, JOSE PAZ, RUBEN GARCIA, BARDOMIANO PAZ, EVARISTO VALERIO, LUIS MONDRAGON, SERGIO APARICIO, RAUL BERMUDEZ, RODRIGO VALERIO, JAVIER MORA, MARCOS HUERTA, JAMIE MORA,	)	No. 18 L 9656
	)	Commercial Calendar N
	)	Honorable Margaret Ann Brennan
Plaintiffs,	)	
v.	)	
MOORE LANDSCAPES, LLC,	)	
Defendants.	)	

ORDER

This matter coming before the Court on Defendant Moore Landscapes, LLC's ("Moore") Motion to Dismiss Plaintiffs Samuel Valerio, Jose Paz, Ruben Garcia, Bardomiano Paz, Evaristo Valerio, Luis Mondragon, Sergio Aparicio, Raul Bermudez, Rodrigo Valerio, Javier Mora, Marcos Huerta, and Jamie Mora's Complaint pursuant to 735 ILCS 5/2-619.1; the Court having considered the written submissions and being advised of the premises, finds:

STATEMENT OF FACTS

Plaintiffs worked as tree planters for Moore. While employed with Moore, Plaintiffs worked on projects for the Chicago Park District ("Park District") and were paid $18.00 per hour. Plaintiffs claim that the contracts between Moore and the Park District were subject to the Illinois Prevailing Wage Act, and as such should have been paid $41.20 per hour instead. Plaintiffs now file this Complaint for violation of the Illinois Prevailing Wage Act, 820 ILCS 130/1 *et seq*, and Moore moves to dismiss pursuant to 735 ILCS 5/2-619.1.

ARGUMENTS OF THE PARTIES

Moore argues that Plaintiffs have failed to allege that the work they performed is the type of work covered under the Act, and that landscaping is generally considered to be outside the scope of the act, unless performed as part of a project which is covered by the Act. Additionally, Plaintiffs may only recover if the contract at issue stipulates that the workers shall be paid the prevailing wage, which the contracts at issue in this case did not.

In response, Plaintiffs argue that the contracts at issue do stipulate that the Prevailing Wage shall paid on the contracts. Further, Plaintiffs argue that Moore has presented no affirmative matter which would defeat their claim as required by 735 ILCS 5/2-619. Finally, Plaintiffs argue that the work they performed included hardscape work, and the planting of new trees, which falls within the scope of work covered by the Act.

In reply Moore argues that the contracts at issue did not stipulate that Moore was required to pay any particular wage under the Act. Further, according to the Illinois Department of Labor, language indicating that a contractor must comply with the Illinois Prevailing Wage Act if applicable, does not constitute a stipulated wage, and therefore Plaintiffs may not recover under 820 ILCS 130/11. Additionally, the affidavits attached in the response do not cure the factual deficiencies in the Complaint.

OPINION OF THE COURT

A Section 2-615 motion attacks the legal sufficiency of a complaint. *Beahringer v. Page*, 204 Ill.2d 363, 369 (2003); *Weather-man v. Gary Wheaton Bank of Fox Valley, N.A.*, 186 111.2d 472, 491 (1999), The motion does not raise affirmative factual defenses, but rather alleges only defects on the face of the complaint. *Beahringer*, 204 Ill. 2d at 369. When considering a Section 2-615 motion to dismiss, pleadings are to be liberally construed so as to do justice between the opposing parties. *Abbott v. Amoco Oil Co.*,249 Ill. App, 3d 774, 778 (2d Dist. 1993). All well pleaded facts within the four corners of the complaint are regarded as admitted and true, together with all reasonable inferences drawn in the light most favorable to the plaintiffs. *Id.* Illinois is a fact-pleading jurisdiction. *See, e.g., Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006); *Weiss v. Waterhouse Securities, Inc.*, 208 Ill.2d 439, 451 (2004). While the plaintiff is not required to set forth evidence in the complaint , the plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 368-69 (2004); *Chandler v. Illinois Central R.R. Co.*, 207 Ill.2d 331, 348 (2003); *Vernon v. Schuster*, 179 Ill.2d 338, 344 (1997). Because Illinois is a fact-pleading jurisdiction, the plaintiffs must allege facts, not mere conclusions, to establish their claim as a viable cause of action. See *Napleton v. Vill. of Hinsdale*, 229 Ill. 2d 296, 305 (2008); *Iseberg v. Gross*, 227 Ill. 2d 78, 86 (2007).

When proceeding under a 2-619 motion, the movant concedes all well-pleaded facts set forth in the complaint but does not admit conclusions of law. *Piser v. State Farm Mut. Auto. Ins. Co.*, 405 Ill. App. 3d 341, 346 (1st Dist. 2010). In reviewing the sufficiency of the complaint, the Court accepts as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts. *Porter v. Decatur Mem. Hosp.*, 227 Ill. 2d 343, 352 (2008). A Section 2-619 motion to dismiss should be granted only when it raises affirmative matter which negates the plaintiff's cause of action completely, or refutes critical conclusions of law, or conclusions of material but unsupported fact. *Ferguson v. City of Chicago*, 213 Ill. 2d 94, 96-97 (2004). Upon ruling on a 2-619 motion, the court must deny the motion if there is a material and genuine question of fact. 735 ILCS § 5/2-619(c); see also, *Semansky v. Rush-Presbyterian-St. Luke's Medical Ctr.*, 208 Ill. App. 3d 377, 384 (1st Dist. 1990).

820 ILCS 130/11 provides that: "Any laborer, worker or mechanic employed by the contractor or by any sub-contractor under him who is paid for his services in a sum less than the stipulated rates for work done under such contract, shall have a right of action for whatever difference there may be between the amount so paid, and the rates provided by the contract together with costs and such reasonable attorney's fees as shall be allowed by the court." Further, "The public body or other entity awarding the contract shall cause to be inserted in the project specifications and the contract a stipulation to the effect that not less than the prevailing rate of wages as found by the public body or Department of Labor or determined by the court on review shall be paid to all laborers, workers and mechanics performing work under the contract." 820 ILCS 130/4(a-1). The Illinois Department of Labor through its website has states that: "A Public Body does not comply with the requirements of the Act by providing a general statement to the effect that the contractor must comply with all applicable laws or stating that the project is subject to the Prevailing Wage Act if applicable. The statement required by the Public Body under the Act must be a statement that states specifically the project is or is not subject to the provisions of the Prevailing Wage Act." https://www2.illinois.gov/idol/FAQs/Pages/public-body-faq.aspx (Accessed January 25, 2019). While the Courts are not bound by the interpretations of an administrative agency, substantial weight and deference is given to the interpretations of an agency charged with administration and enforcement of that statute. Abrahamson v. Illinois Department of Professional Regulation, 153 Ill. 2d 76, 97-98, 606 N.E.2d 1111, 1121 (1992).

The language used in the contracts at issue says that, "Contractor shall pay all persons employed by the Contractor or its Subcontractors, prevailing wages where applicable." As there is no case law addressing this particular issue, the Court defers to the interpretation of the Illinois Department of Labor and finds that this language does not constitute a stipulation under the Prevailing Wage Act. Further, as the contracts at issue contained no stipulated rate of payment, Plaintiffs may not pursue a claim under 820 ILCS 130/11. Accordingly, Moore's Motion to Dismiss pursuant to 735 ILCS 2-619(a)(9) is granted, and Plaintiffs' Complaint is dismissed with prejudice.

Because the Court finds that the contract language precludes any recovery under 820 ILCS 130/11, the Court need not reach the 735 ILCS 5/2-615 issues.

Wherefore, it is hereby

ORDERED:

1. Moore's Motion to Dismiss pursuant to 735 ILCS 5/2-619.1 is GRANTED and Plaintiffs' Complaint is DISMISSED with prejudice.

Entered: Judge Margaret Ann Brennan

JAN 25 2019

Judge Margaret Ann Brennan 1846
Circuit Court of Cook County, Illinois
County Department, Law Division

Circuit Court - 1846

IN THE APPELLATE COURT OF ILLINOIS
FOR THE FIRST DISTRICT

No. 1-19-0185

SAMUEL VALERIO, ET AL.,
Plaintiffs-Appellants

E-FILED
Transaction ID: 1-19-0185
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Thomas D. Palella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

v.

MOORE LANDSCAPING, INC.
Defendant-Appellee

Appeal from the Circuit Court of Cook County, Illinois
County Department, Law Division
Case No. 18 L 9656
The Honorable Judge Brennan, Judge Presiding

APPELLATE BRIEF AND APPENDIX FOR PLAINTIFFS-APPELLANTS SAMUEL VALERIO, ET AL.

ROBERT HABIB & BRUNELL DONALD-KYEI
Attorneys for Plaintiffs
77 W. Washington Street
Suite 1507
Chicago, IL 60602
(312) 201-1421
Attorney No. 13519 & 46088

ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

STANDARD OF REVIEW

ARGUMENT

THE COURT FAILED TO CONSIDER THE STRONG PUBLIC POLICY IN FAVOR OR WORKERS RECEIVING THE PREVAILING WAGE.

ISSUE PRESENTED FOR REVIEW

1. WHETHER THE COURT FAILED TO CONSIDER THE STRONG PUBLIC POLICY IN FAVOR OF WORKERS RECEIVING THE PREVAILING WAGE?

2. WHETHER THE COURT ERRED IN GRANTING DEFENDANT'S MOTION TO DISMISS WHEN IT RULED DEFENDANT HAD DISCRETION TO PAY PLAINTIFFS LESS THAN PREVAILING WAGE?

JURISDICTION

This Court has jurisdiction pursuant to Illinois Supreme Court Rule 303 in that this is an appeal from a final judgment entered in the Circuit Court of Cook County on January 25, 2019. (C-177-180)) On February 1, 2019, Plaintiffs timely filed their notice of appeal (C-181).

STATUTES & REGULATIONS INVOLVED

820 ILCS §130/1, *et seq.*, The Illinois Prevailing Wage Act ("IPWA")

http://www2.illinois.gov/idol/FAQs/Pages/Landscaping.aspx

STATEMENT OF FACTS

Samuel Valerio and the 11 other plaintiffs who brought the lawsuit are landscape workers, specifically tree planters, employed by the defendant Moore Landscaping. Moore Landscaping is located in Northbrook, Illinois. (C- 2-4) It regularly enter into contract a with public bodies to perform landscaping and related work for public entities such as the Chicago Park District. (C-4)

Moore entered into a contract with the Chicago Park District in 2012, Exhibit A, 2015 Exhibit B, and 2018 Exhibit C, which provides in pertinent paid. (C-4)

> "**32. Prevailing Wage Rates:**
>
> Contractor shall pay all persons employed by Contractor, or its subcontractors, prevailing wages where applicable. As a condition of making payment to the Contractor, the Park District may request the Contractor to submit and affidavit to the effect that not less than the prevailing hourly wage rate is being paid to laborers employed on contracts in accordance with Illinois Law." (C-46)

In the complaint, that pursuant to both the Contractor with the Park District and the Prevailing Wage Act, 820 ILCS 130/11, they were entitled to be paid the prevailing wage. (C-8, C-9)

The prevailing wage rate for the work is set by the Department of Labor for each craft or type of worker needed to execute the contract. The prevailing wage for laborers is set by the Department of Labor at $41.20 per hour during contract periods between Plaintiffs and Defendant. (C-9) Defendant stipulated in the District Park Contract that it would pay its employees, such as the Plaintiffs, the prevailing wage. Defendant paid plaintiffs $18.00 per hour and not the $41.20 per hour prevailing wage set by the Department of Labor under their contract. At all relevant times Plaintiffs were employed full-time Defendant. (C-26) The Prevailing

Wage Act 820 ILCS 130/11 provides for a private right of action by workers employed under the contract, who have been paid less that the stipulated rates for the work done on the contract. The statute further provides that an employer found liable for paying employees less than the prevailing wage is also liable for reasonable attorney fees; punitive damages as set for in the statute, and additional monies owed to the Department of Labor. (C-9)

At all relevant times Plaintiffs were full-time employees of Defendant. Plaintiffs, landscape laborers, complied with all work required of them by their contract with Defendant. At no time during contract between Plaintiffs and Defendant did Plaintiffs consent nor stipulate to being paid less than prevailing wage.

Defendant filed a Motion to Dismiss and Memorandum of Law in support of its Section 2-619.1 Motion to Dismiss on November 9, 2018. (C-120-132) One of the arguments raised by the defendant was since the contract read:

> "Contractor shall pay all persons employed by Contractor, or its subcontractors, prevailing wages where applicable."

this language did not require it to pay plaintiff the prevailing wage.

Defendant argued that this language gave it discretion to pay plaintiff less than the prevailing wage.

The defendants Motion to Dismiss, while brought under 735 ILCS 5/5-2-619 (9) did not include any affidavits nor any supporting documents.

The Plaintiffs responded with a Reply Brief, which included affidavits by all of the plaintiffs that their work as tree planters, involved original installation of trees which requires them to be paid to prevailing wage as set forth by this Department of Labor. (C-135-154)

The defendant filed a Reply Brief, in which for the first time cited as FAQ, from the Department of Labor which dealt only with the notification by the public body of whether the prevailing wage must be paid. (C-164-175).

On January 25, 2019, the trial Court entered a written opinion granting the defendant's 2-619 (9) Motion To Dismiss with prejudice. (C-177-180) stating:

"This language used in the contracts at issue says that, "Contractor shall pay all persons employed by Contractor, or its subcontractors, prevailing wages where applicable." As there is no case law addressing this particular issue, the Court defers to the interpretation of the Illinois Department of Labor and finds that this language does not constitute a stipulation under the Prevailing Wage Act. Further, as the contracts at issue contained no stipulated rate of payment, Plaintiffs may not pursue a claim under 820 ILCS 130/11. Accordingly, Moore's Motion to Dismiss pursuant to 735 ILCS 2-619(a)(9) is granted, and Plaintiffs' Complaint is dismissed with prejudice."

Plaintiff timely filed its Notice of Appeal on January 28, 2019. (C-181).

ARGUMENT

In this action brought by landscape laborers to enforce their right pursuant to statute to receive the Prevailing Wage, the trial court in granting the dismissal erred in several ways. First, it ignored the state's public policy set forth by the legislature in 820 ILCS 130/1 that laborers on Public works projects received the prevailing wage, as set forth by the Department of Labor. Second, it misread or failed to read section 130/4 which provides that even if the notice given to the contractor by the Chicago Park District was insufficient, the contractor is still required to pay the workers prevailing wage as set for in Brandt Construction v. Ludwig, 376 Ill.App.3d 94 (3rd Dist. 2007). Finally it denied Plaintiffs the right to sue under section 130/11 when said statute was designed by the legislature to allow workers such plaintiffs to enforce their right to receive the prevailing wage.

STANDARD OF REVIEW

A motion to dismiss under section 2-619 "admits the legal sufficiency of the plaintiff's claim but asserts certain defects or defenses outside the pleadings which defeat the claim asserted by plaintiff." Dloogatch v. Brincat. 396 Ill.App.3d 842, 846 (2009), When ruling on a section 2-619 motion, the court should construe the pleadings and supporting documents in the light most favorable to the plaintiff, the nonmoving party. Vitro v. Mihelic, 209 Ill.2d 176, 81 (2004) The court must accept as true all well-pleaded facts in the plaintiff's complaint and all inferences that may reasonably be drawn in the plaintiff's favor. Id. The question on appeal is "'whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law. " Illinois Graphics Co. v. Nickum, 159 Ill.2d 469, 494 (1994)

If the grounds for dismissal do not appear on the face of the pleading attached, the

Motion To Dismiss must be supplemented by affidavit. Young v. Caterpillar, 258 Ill.App.3d 792, 629 N.E.2d. 830 (1st Dist. 1994); Mogul v. Tucker, 152 Ill.App.3d 610, 504 N.E.2d. 872 (1st Dist. 1987) Review of a decision on a motion challenging the sufficiency of the pleadings is de novo. City of Chicago ex rel Scachitti v. Prudential Securities, Inc., 332 Ill. App.3d 353, 772 N.E.2d 306 (2002); Zahl v. Krupa, 365 Ill.App.3d 653, 850 N.E.2d 304 (1st Dist. 2006)

I. THE COURT FAILED TO CONSIDER THE STRONG PUBLIC POLICY IN FAVOR OF WORKERS RECEIVING THE PREVAILING WAGE.

The Illinois Prevailing Wage Act 820 ILCS 130/1 set forth:

> "Sec. 1. It is the policy the State of Illinois that a wage of no less than the general prevailing hourly rate as paid for work of a similar character in the locality in which the work is performed, shall be paid to all laborers, workers and mechanics employed by or on behalf of any and all public bodies engaged in public works."

The Prevailing Wage Act is a public policy statute, public bodies are required to adhere to its provisions. Fox River Valley Dist. Council v. Board of Education, 51 Ill. App. 3d. 345, 373 N.E. 2d. 60 (2nd Dist. 1978). The purpose of the Act is to ensure that workers receive a decent wage. People ex rel Bernardo v. Illinois Community Hospital, 163 Ill. App. 3d. 987 516 N.E. 2d 132 (4th Dist. 1982). The general purpose of this Act is to require municipalities and other legal entities to ascertain and pay the prevailing wages and public projects. City of Monmouth v. Lorenz, 30 Ill. 2d. 195 N.E. 2d. 661 (1963). The intent of this Act is to ensure that on public works projects, no contractor or subcontractor can pay workers less than the going rate for them to be done. Frye v. City of Iroquois, 140 Il. App. 3d. 749, 489 N.E.2d. 406 (3rd Dist. 1986).

If the contract contains a general prevailing wage provision and if the prevailing wage has been determined by either the public body, or the Department of Labor, the Contractor is

bound to pay the contractor's relevant employees that specified wage. Contreras v. Central Resources Corp., 680 F. Supp. 289 (N.D. Ill. 1988).

820 ILCS 130/2 provides that the public body awarding any contract for public work shall specify in the call for bids on the contract that the general prevailing rate of wages on a per hour basis be paid.

Section 130/4 further states that it is mandatory upon the contractor to whom the contract is awarded to pay the prevailing wage.

Section 130/4 also provides that the public body give notice to the contractor that not less than the prevailing wage be paid, but further states;

> "The failure by a public body or other public entity to provide written notice does not relieve the contractor of the duty to comply with the prevailing wage rate nor of the obligation to pay any back wage as determined under the Act."

Section 130/4 does not require that the specific amount of the prevailing wage be included in the public works contract. Instead it merely calls on the Public body itself or the Department of the Labor to ascertain the amount, Contreras v. Central Resource Corp Supra.

In the instant case, the trial court ignored the public policy of Illinois, as expressed in the statute, by choosing to construe the contract with the Chicago Park District and the statute, 820 ILCS 130/11, as narrowly as possible and in favor of the defendant. In construing a statute the court may consider the reason for the law, the problem sought to be remedied, the purpose to be achieved and the consequences of construing the statute one way or another. People v. Hunter, 986 N.E.2d 1185 (Ill. 2019) The public policy of the state must be sought in its constitution, legislative enactments and judicial decisions. Roanoke Agency Inc. v. Edgar, 101 Ill.2d 315, 461

N.E.2d 1365 (1984) If there are ambiguous substantive portions of a statute, the statement of public policy is to be considered to resolve any ambiguity. In Re Estate of Scherr, 81 N.E. 2d 131 (2nd Dist. 2017).

In this case the trial court in considering 130/11 as to the term "stipulated" chose to ignore the public policy behind the Prevailing Wage Act to rule in favor of defendant. Its error in doing so, is manifest in that it ignored the public policy of Illinois, that the prevailing wage be paid to workers on all public works projects.

II. THE COURT ERRED IN GRANTING DEFENDANT'S MOTION TO DISMISS WHEN IT RULED DEFENDANT HAD DISCRETION TO PA PLAINTIFFS LESS THAN PREVAILING WAGE.

The trial court ruled Defendant had discretion in paying Plaintiffs less than the prevailing wage based on "language in contracts at issue which state, Contractor shall pay all persons employed by the Contractor or its Subcontractors, prevailing wages where applicable. The Court indicated, "As there is no law addressing this particular issue, the court defers to the interpretation of the Department of Labor and finds that this language does not constitute a stipulation under the Prevailing Wage Act." (C-177-181) The trial court erred in these determinations. Section 130/4 expressly provides that the workers be paid prevailing wage regardless of whether the contract provided adequate notice. The FAQ, quoted by the trial court actually states that failure to give notice by the public body does not relieve the contractor's obligation to pay the prevailing wage.

Section 2 of The Prevailing Wage Act states "this Act applies to the wages of laborers, mechanics and other workers employed in any public works.... by any public body and to anyone under contracts for public works." 820 ILCS 130/2 (West 2008). Section 2 defines

"public works" to mean "all fixed works constructed by any public body" and further provides: "'Public works' as defined herein includes all projects financed in whole or in part with bonds issued under the Illinois Finance Authority Act." 820 ILCS 130/2 (West 2008). Thus, under the Act, a public work is defined as a fixed work constructed by any public body, and that definition includes projects financed in whole or in part with Authority bonds. Plaintiffs assert that all parties would agree that The Chicago Park District agree is a public body involved in doing "public work," and by definition a public work is a fixed work constructed by a public body (which includes projects financed with Authority bonds), and is therefore governed by the Illinois Prevailing Wage Act. Landscape or modifications to real estate are included within the definition of fixed work. A project does not have to be for public use to be covered.

Section 4(a) further requires public works project specifications and contracts to contain "a stipulation to the effect that not less than the prevailing rate of wages as found by the public body or the Department of Labor or determined by the court on review shall be paid to all laborers, workers and mechanics performing work under the contract." 820 ILCS 130/4(a) (West 2004).

"Work performed by persons who sometimes may be called "landscape plantsman" or "landscape laborer" is covered by the classification of laborer. http://www2.illinois.gov/idol/FAQs/Pages/Landscaping.aspx. Neither bids nor contracts nor acceptances on landscape work covered by the Prevailing Wage Act should be based upon rates of pay other than that those associated with the classifications of laborers, operator, or truck driver the Department has published." Id.

Section 4(a) indicates the legislature intended that subcontractors like Defendant to remain liable for back wages. The legislature's intent is evident from its use of mandatory terms such as "shall be paid," "shall be mandatory" and "upon any subcontractor."

The Act dictates that a subcontractor is obligated to pay the prevailing hourly rate to its workers as determined by the Department of Labor; the Department of Labor is not required to notify subcontractors that the Act applies to their project. The only stipulation relevant to Plaintiffs' being paid prevailing wage the trial court should have been concerned with rests in Section 4 (e) of the Prevailing wage act and Department of Labor's website, which determined Plaintiffs would be paid not less than the prevailing wage as laborers for Defendant, therefore, Defendant's Motion to Dismiss should have been denied.

A. PLAINTIFFS AS LANDSCAPE LABORERS ARE COVERED BY THE CLASSIFICATION OF LABORER UNDER THE PREVAILING WAGE ACT WHICH REQUIRES THEY BE PAID PREVAILING WAGE.

The relevant portions of the Prevailing Wage Act are as follows. Section 1 declares the policy of the Prevailing Wage Act:

"It is the policy of the State of Illinois that a wage of no less than the general prevailing hourly rate as paid for work of a similar character in the locality in which the work is performed, shall be paid to all laborers, workers and mechanics employed by or on behalf of any and all public bodies engaged in public works." 820 ILCS 130/1 (West 2004).

Section 3 of the Prevailing Wage Act states in relevant part:

"a wage of no less than the general prevailing hourly rate as paid for work of a similar character in the locality in which the work is performed, shall be paid to all laborers, workers and mechanics" employed by all public bodies. 820 ILCS 130/1 (West 2006). Section 4(a) states that a subcontractor's obligation to pay the prevailing wage is "mandatory upon the contractor to whom the contract is awarded and upon any subcontractor under him *** to pay not less than the specified rates to all laborers, workers and mechanics employed by them in the execution of the contract ***. *** The public body awarding the contract shall cause to be inserted in the project specifications and the contract a stipulation to the effect that not less than the prevailing rate of wages as found by the public body or Department of Labor *** shall be paid ***." 820 ILCS 130/4(a) (West 2006)

Landscape workers are covered by Department of Labor's laborer classification and should have received pay of $41.20 per hour on public works projects during Plaintiffs' and Defendant's contract periods. Defendant has in no way shape or form disputed that Plaintiffs are

laborers. The Prevailing Wage Act does not require that a stipulation be entered into to determine whether a laborer should be paid less than Prevailing Wage. Plaintiffs are workers who fall under the classification of laborer which is a classification where it is mandatory to be paid prevailing wage. https://www2.illinois.gov/idol/FAQs/Pages/Landscaping.aspx The Act makes it mandatory for laborers to be paid Prevailing Wage. Defendant has not produced any agreements or evidence indicating Plaintiffs agreed or stipulated to being paid less than prevailing wage nor any evidence that Plaintiffs' fall under any category other than laborer. Id.

Therefore the trial court relying on language "prevailing wage shall be paid where applicable" and determining it was a stipulation which gave Defendant the right to pay less than prevailing wage is in error. The Department of Labor recognizes no such stipulation when it comes to laborers being paid prevailing wage on a Public Works project funded by the City of Chicago. https://www2.illinois.gov/idol/FAQs/Pages/Landscaping.aspx. The prevailing wage is mandatory for Plaintiffs employed as laborers on Defendant's public work project according to the Prevailing Wage Act. Therefore, Defendant's Motion To Dismiss should have been denied.

B. PLAINTIFFS HAVE A CAUSE OF ACTION UNDER SECTION 11 OF THE ILLINOIS PREVAILING WAGE ACT AND DEFENDANT'S MOTION TO DISMISS SHOULD HAVE BE DENIED.

The trial court held that, "as the contracts at issue contained no stipulation rate of payment, Plaintiffs may not pursue a claim under 820 ILCS 130/11." The Prevailing Wage Act gives Plaintiffs the right to private claim of action as they were entitled to prevailing wage as laborers for Defendant. Section 11 of the Illinois Prevailing Wage Act offers a limited private cause of action and states in pertinent part:

> "Any laborer, worker or mechanic employed by the contractor or by any subcontractor under him who is paid for his services in a sum less than the stipulated wages for work

done under such contract, shall have a right of action for whatever difference there may be between the amount so paid, and the rates provided by the contractor together with costs and such reasonable attorney's fees as shall be allowed by the court. 820 ILCS 130/11"

As the terms of this provision make clear, the private cause of action under the Act is limited to a claim for actual damages (i.e., the dollars-and-cents difference between what the laborer, worker, or mechanic was actually paid and what he should have been paid under the Act). Plaintiffs are laborers whose work falls within the scope of the statute. Plaintiffs have been paid $18.00 per hour which is far below the $41.20 guaranteed them under the Illinois Prevailing Wage as laborers. Plaintiffs' sought in their Complaint before the trial court to be retroactively paid prevailing wage for their work and also that their attorneys' fees be paid, which the trial court denied.

In Brandt, the court had to determine (1) whether Brandt received "notice" of revised prevailing wage under the Act; (2) if Brandt did not receive notice, whether the revised rate still applies under the Act; and (3) if it does, whether Brandt is liable for penalties and interest. Brandt Construction Co. v. Ludwig, 376 Ill.App.3d 94, 105 (3rd Dist. 2007).

The Court held, "The record is clear that it is undisputed that Brandt was never personally or directly informed of the revised rate (prevailing wage). Even the deposition testimony of the Department's labor conciliator specifically indicates that Brandt was never sent notice of the Increase." Id. There Brandt did not have to pay penalties or interest.

However, the Appellate Court in Brandt, supra, further held that even if Brandt had not received notice of the revised prevailing wage, it was still liable for the worker's back pay, stating:

> "Upon review of the above statutory language, we find that a contractor is obligated to pay no less than the general prevailing hourly rate to its workers, as determined by the Department of Labor. The plain language of section 4(d) dictates nothing less. Specifically, it states that "[i]f the Department of Labor revises the prevailing rate of hourly wages to be paid by the public body, the revised rate shall apply to such contracts." 820 ILCS 140/4[d] (West 2004). We do not interpret the remaining language requiring the public body to also notify the contractor of the revised rate by placing a condition precedent upon the contractor's duty to pay the revised rate. Such an interpretation would effectively defeat the entire purpose behind the Act."

Thereafter in People *ex rel* Department of Labor v. Sackville Construction, Inc., 402 Ill. App.3d 195 (3rd Dist. 2010), the Appellate Court reiterated its strong support that workers on public projects be paid the prevailing wage.

In Sackville, supra, the subcontractor-plaintiff argued that it should have not been required to pay prevailing wage as it was not given adequate notice of the requirement that it do so.

Again, the Appellate Court rejected the argument stating it was not necessary that Sackville, a subcontractor, be notified that it had to pay the prevailing wage. The statute mandated that it do so. "To read a notice requirement into Section 4 would defeat the purpose and intent of the Act, and unfairly punish those it was meant to protect, the laborers." Sackville, supra.

As can be seen, any review of the contracts in question, the Statute, and the relevant Illinois case law, conclusively demonstrate that Moore stipulated in the District Park Contract that it would pay its employees, such as the Plaintiffs, the prevailing wage.

Therefore, Plaintiffs have a cause of action under Section 11, and the trial court's granting of Defendant's Motion to Dismiss must be reversed.

C. PLAINTIFFS ARE LABORERS AS CLASSIFIED BY THE PREVAILING WAGE ACT AND DEFENDANT'S FAILURE TO PAY THEM PREVAILING WAGE ENTITLES PLINTIFFS' TO RECOVER UNPAID WAGES AND PUNITIVE DAMAGES.

Pursuant to 820 ILCS 130/11 Plaintiff is entitled to recover unpaid wages for five years prior to the filing of this suit, plus punitive damages in the amount of two percent (2%) per month of the amount of underpayments.

As the terms of 820 ILCS 130/11 makes clear, the private cause of action under the Act is limited to a claim for actual damages (i.e. the dollars-and-cents difference between what the laborer was actually paid and what he should have been paid under the Act). The trial court's record has sufficient evidence to rely on in calculating back pay owed by Defendant to Plaintiff's for failing to pay prevailing wage (1) Plaintiffs worked full-time based on their paycheck stubs; (2) the prevailing wage applicable to laborers on Defendant's projects as determined by the Department of Labor was $41.20; (3) Defendant's paid Plaintiffs $18.00 per hour instead of $41.20 the prevailing wage leaving a shortage in pay per hour of $23.20 based on Plaintiffs' paycheck stubs. Defendant's failure to pay Plaintiffs prevailing wage subjects Defendant to owing back pay and other penalties. Sackville, 402 Ill.App.3d at 203. Plaintiffs are entitled to punitive damages at 2% per month of the amount of under payments and reasonable attorneys' fees. The Department of Labor is entitled to 20% of such underpayment. 820 ILCS 130/11

The trial court erred in not holding Defendant liable for back wages resulting from failing to pay Plaintiffs prevailing wage. The trial court had sufficient evidence it should have relied upon to establish that Plaintiffs had a right to recover under the Prevailing Wage Act, and Defendant's Motion to Dismiss should have been denied.

CONCLUSION

For all of the foregoing reasons, Plaintiffs-Appellants, respectfully request that this Court

reverse the Order granting the Motion To Dismiss and remand for a trial on the merits.

/s/ ROBERT HABIB
Attorney for Appellants

/s/Brunell Donald-Kyei
Attorney for Appellants

ROBERT HABIB, ATTORNEY #13519
BRUNELL DONALD-KYEI, ATTORNEY #46088
ATTORNEYS FOR PLAINTIFFS
77 W. WASHINGTON STREET
SUITE 1507
CHICAGO, IL 60602
(312) 201-1421
ROBHABIB77@GMAIL.COM
REALDONALDKYEI@GMAIL.COM

CERTIFICATE OF COMPLIANCE

I, Attorney Robert Habib, certify that this Brief to the Appellate Court conforms to the Requirements of Rule 341 (a) and (b). The length of the Opening Brief, excluding the pages containing the Rule 341 (d) cover, the Rule 341(c) certificate of compliance, the certificate of service, and the matters appended to the Opening brief under Rule 315 (c)(6) is 14 pages.

/s/Robert Habib
ROBERT HABIB

ATTORNEY NO. 13519
ROBERT HABIB
ATTORNEY FOR APPELLANT
77 W WASHINGTON STREET #1507
CHICAGO, IL 60602
(312) 201-1421
Robhabib77@gmail.com

VERIFICATION

Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Instrument are true and correct.

/s/ Robert Habib
ROBERT HABIB

ATTORNEY NO. 13519
ROBERT HABIB
ATTORNEY FOR APPELLANT
77 WEST WASHINGTON STREET
SUITE 1507
CHICAGO, ILLINOIS 60602
(312)201-1421
ROBHABIB77@GMAIL.COM

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Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

No. 1-19-0185

IN THE
APPELLATE COURT OF THE STATE OF ILLINOIS
FIRST JUDICIAL DISTRICT

SAMUEL VALERIO, JOSE PAZ, RUBEN GARCIA BARDOMIANO PAZ, EVARISTO VALERIO, LUIS MONDRAGON, SERGIO APARICIO, RAUL BERMUDEZ, RODRIGO VALERIO, JAVIER MORA, MARCOS HUERTA, JAIME MORA,	) Appeal from the Final Order and) Judgment of the Circuit Court of Cook) County, Illinois)) Hon. Margaret Ann Brennan,) Judge Presiding)
Plaintiffs-Appellees,	) Case No. 2018 L 09656))
v.	))
MOORE LANDSCAPES, LLC	))
Defendant-Appellee.	)

BRIEF OF DEFENDANTS-APPELLEES MOORE LANDSCAPES, LLC

Peter J. Gillespie
Brian K. Jackson
LANER MUCHIN, LTD.
515 N. State Street
Suite 2800
Chicago, IL 60654
pgillespie@lanermuchin.com
bjackson@lanermuchin.com
P: (312) 467-9800
F: (312) 467-9479
Attorneys for Defendant-Appellee
Moore Landscapes, LLC

ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

I. NATURE OF THE CASE

This is an appeal from the trial court's ruling on Moore Landscapes' motion to dismiss. In its order, the trial court held that Plaintiffs did not have the right to bring a private-party lawsuit under Section 11 of the Prevailing Wage Act because Moore Landscapes did not stipulate to pay Plaintiffs at the prevailing wage in any of the contracts at issue. In particular, while the Prevailing Wage Act grants the Illinois Department of Labor with broader authority to investigate and enforce the statute, private parties, such as the plaintiffs, may only bring a claim under the statute when they have been paid at a rate less than what had been stipulated to in the contract with the public body. When it granted Moore Landscapes' motion to dismiss, the trial court analyzed the relevant provisions in each of the contracts at issue and found that each did not include any stipulated pay rate. The trial court based its decision on the Illinois Department of Labor's interpretation of language contained in the Prevailing Wage Act, which specifically advised public bodies within the State of Illinois that the language contained in each of the contracts at issue was not a stipulation within the requirements of the Prevailing Wage Act. Because the contracts did not contain a stipulation, the Prevailing Wage Act did not authorize Plaintiffs to file their lawsuit.

In response to Moore Landscapes' motion to dismiss, Plaintiffs did not dispute that they lacked a right of action under the Prevailing Wage Act, if the contracts at issue did not contain a stipulation to pay them prevailing wages. They also did not contest that the Illinois Department of Labor had interpreted the statutory text of the Prevailing Wage Act to find that the language used in the contracts was not a stipulation, or contest that the trial court should rely on the agency's interpretation of the statute's meaning. Nor did Plaintiffs

provide the trial court with any legally supported argument that the Illinois Department of Labor erred in its interpretation of the Prevailing Wage Act's language and requirements. Indeed, Plaintiffs did not argue on appeal that the Illinois Department of Labor's interpretation of the statute was incorrect or that the trial court erred in relying on the Illinois Department of Labor's interpretation of the statute's language. In other words, Plaintiffs provided the trial court with no legally supported basis to refute Moore Landscapes' arguments. Accordingly, Plaintiffs have waived these arguments, and the Court should affirm the trial court's ruling for these reasons, standing alone.

Lastly, rather than provide the Court a legally supported argument that the contracts at issue contained a stipulation, Plaintiffs have made an erroneous policy-based argument that they might be deprived of wages under the statute unless this Court agrees with them. Their arguments are without basis. The Prevailing Wage Act authorizes the Illinois Department of Labor to act when prevailing wages were required to be paid, even if the contractor did not stipulate to pay them, as reflected in the decisions cited by Plaintiffs in their opening brief. In this case, the trial court only determined that Plaintiffs lacked a right of action under the Prevailing Wage Act; the trial court did not make a determination as to whether Plaintiffs were entitled to a prevailing wage rate, as Plaintiffs were not authorized by the statute to ask the trial court to make that determination. Accordingly, Plaintiffs have not been deprived of any remedy actually available to them under the statute, and this Court should reject their attempt to revive their claims based on their inaccurate arguments regarding the Prevailing Wage Act.

II. ISSUES PRESENTED FOR REVIEW

A. Did the trial court err in dismissing Plaintiffs claims based on its determination that the contracts at issue did not contain a stipulation to pay Plaintiffs at a prevailing wage?

B. Did Plaintiffs waive the argument that the Illinois Department of Labor's interpretation of the Prevailing Wage Act's requirements was incorrect based on their failure to raise this issue before the trial court?

C. Did Plaintiffs waive the argument that the trial court should give substantial weight and deference to the Illinois Department of Labor's interpretation of the Prevailing Wage Act's requirements based on their failure to raise this issue before the trial court?

D. Did Plaintiffs waive the argument that the trial court erred in giving substantial weight and deference to the Illinois Department of Labor's interpretation of the Prevailing Wage Act's requirements by failing to raise this issue on appeal?

E. Did Plaintiffs waive the argument that the Illinois Department of Labor's erred in its interpretation of what constitutes a stipulation under the Prevailing Wage Act by failing to raise this issue on appeal?

III. ADDITIONAL STATEMENT OF FACTS

Plaintiffs are a group of tree planters, who have performed work for Moore Landscapes on, among other things, various jobs for the Chicago Park District. Plaintiffs allege that they were entitled to be paid prevailing wages for work performed under the terms of three contracts. The first contract, which Plaintiffs attached to their pleading stated only that Moore would pay prevailing wages "when required" and that Moore Landscapes would certify to the Chicago Park District that it complied with its prevailing wage obligations upon request. (C 33, ¶ 32). This contract did not call for Moore

Landscape to provide tree planting services. (C 33, ¶ 1 A-B). The second agreement did not include a stipulated pay rate applicable to employees engaged in such work. (C 204, ¶ 32). The third agreement contained the identical prevailing wage provision as the other two agreements, *i.e.*, the contract did not include a stipulated pay rate covering Plaintiffs or anyone else. (C 223, ¶ 32).

In addition, in the contract that was attached as Exhibit C to Plaintiffs' complaint, the Chicago Park District included an Illinois Department of Labor FAQ documents that advised landscaping companies that landscaping work often is not covered by prevailing wage requirements. (C 226-227). Among other things, this FAQ document stated that for purposes of the Prevailing Wage Act, landscaping work that is not being performed in conjunction with a project otherwise covered by the Act or that does not involve hardscape work is outside of the scope of the Act. (C 227). Such work includes, but is not limited to, tree planting when the tree is replacing a diseased, damaged, or hazardous tree. *Id.*; *see also* 820 ILCS 130/3 ("Only such laborers ... as are directly employed ... in actual construction work on the site of the building or construction job ... shall be deemed to be employed upon public works.").

Thus, the Chicago Park District not only did not include a stipulation it each of the contracts at issue requiring Moore Landscape to pay prevailing wages, the Park District went out of its way to advise Moore Landscape that prevailing wages would not need to be paid for the very type of work that Plaintiffs allege that they performed, planting trees to replace diseased, damaged, or hazardous trees. (C 210; C 227).

IV. STANDARD OF REVIEW

A section 2-619 motion to dismiss assumes the allegations of the complaint to be true, but it asserts an affirmative defense or other matter that would defeat the plaintiff's

claim. 735 ILCS 5/2-619; *Nielsen-Massey Vanillas, Inc. v. City of Waukegan*, 276 Ill. App. 3d 146, 151 (1st Dist. 1995). For purposes of such a motion, an "affirmative matter" need not be in the form of evidence such as an affidavit, but may be a legal matter that operates to defeat the claim. *See Barber-Colman Co. v. A&K Midwest Insulation Co.*, 236 Ill. App. 3d 1065 (1st Dist. 1992) (a section 2-619 motion need not be accompanied by supporting material if the affirmative matter appears on the face of the complaint or can be determined as a matter of law); *see also CitiMortgage, Inc. v. Parille*, 2016 IL App (2d) 150286, ¶ 28 (where the contracts attached to the pleading defeated the claim, "no affidavit was necessary").

In assessing the validity of a claim, the exhibits attached to a complaint must be considered as part of that complaint. *Burton v. Airborne Express, Inc.*, 367 Ill. App. 3d 1026, 1034 (1st Dist. 2006). Further, if the allegations in a pleading conflict with the facts disclosed in an exhibit, the exhibit controls. *Id.* Where an attachment is a contract or other instrument, the proper construction of that contract is a matter of law. *Gallagher v. Lenart*, 226 Ill. 2d 208, 219 (2007). "When interpreting provisions of a statute, the cardinal rule of statutory construction, to which all other canons and rules are subordinate, is to ascertain and give effect to the true intent and meaning of the legislature." *Cement Masons Pension Fund, Local 803 v. William A. Randolph, Inc.*, 358 Ill. App. 3d 638, 642 (1st Dist. 2005).

A claim should be dismissed on the pleadings when "no set of facts can be proved which will entitle [the] plaintiff to recover." *Gallagher*, 226 Ill. 2d at 219. The Court reviews the dismissal of a complaint *de novo*. *Wallace v. Smyth*, 203 Ill. 2d 441 (2002).

V. ARGUMENT

A. The Trial Court Was Correct In Granting Moore Landscapes' Motion To Dismiss Because, As Reflected By Illinois Department of Labor Guidance, None Of The Contracts At Issue Included A Stipulation Requiring Payment Of Prevailing Wages.

Section 4(a) of the Prevailing Wage Act requires that the public body awarding a project subject to the Act ascertain the applicable prevailing wages and include a stipulation in the contract that such wages will be paid. 820 ILCS 130/4(a); *see also Brandt Construction Co. v. Ludwig*, 376 Ill. App. 3d 94, 107 (3rd Dist. 2007) (public body is required to notify contractor of applicable prevailing wage rates, including changes to the rates). In particular: "The public body ... awarding the contract shall cause to be inserted in ... the contract a stipulation to the effect that not less than the prevailing rate of wages as found by the public body ... shall be paid to all laborers, workers and mechanics performing work under the contract." 820 ILCS 130/4(a-1). By including this stipulation, the public body allows contractors to prepare bids reflecting the labor costs that will be incurred for work performed at or above the prevailing wage rate in effect, and, unlike the contracts at issue in this case, does not leave it up to the contractor to investigate when employees needed to be paid at a prevailing wage rate.

Although Plaintiffs provided the trial court with no legal basis for the intended meaning of the term "stipulation" under the Prevailing Wage Act, the Illinois Department of Labor has provided guidance to public bodies as to what constitutes such a stipulation and what a stipulation should include in order to comply with the Act's requirements. Specifically, the Illinois Department of Labor instructed public bodies that a contractual provision that merely provides that work will be paid at a prevailing wage, when

applicable, is not a contractual stipulation within the meaning of the Prevailing Wage Act. (C 127; C 172-175; C 179). Rather, the Illinois Department of Labor advised:

> A Public Body does not comply with the requirements of the Act by providing a general statement to the effect that the contractor must comply with all applicable laws or stating that the project is subject to the Prevailing Wage Act if applicable. The statement required by the Public Body under the Act must be a statement that states specifically the project is or is not subject to the provisions of the Prevailing Wage Act.

Id. The agency's guidance is entirely consistent with the requirement set forth in the Prevailing Wage Act that the required stipulation must state that the contractor shall pay "not less than the prevailing wage." 820 ILCS 130/4(a-1). As Plaintiffs' concede, the language in the contracts at issue was conditional and discretionary, as the contracts stated that wages would be paid at a prevailing rate "when required," rather than provide that wages were required to be paid at the prevailing rate. Given that landscaping work is not always subject to prevailing wages, this approach was entirely appropriate under the circumstances. (App. Br. at 1).

As Plaintiffs also conceded in response to Moore Landscapes' motion to dismiss, the Prevailing Wage Act provides for a very limited private right of action to employees. (C 141). The statute only allows employees to sue for the difference between what the employer stipulated would be paid, and the amount that was actually paid. Specifically, Section 11 states, in its pertinent part:

> Any laborer, worker or mechanic employed by the contractor or by any sub-contractor under him who is paid for his services in a sum less than the stipulated rates for work done under such contract, shall have a right of action for whatever difference there may be between the amount so paid, and the rates provided by the contract together with costs and such reasonable attorney's fees as shall be allowed by the court.

820 ILCS 130/11. The Illinois Department of Labor has broader enforcement rights under this provision, as the Department of Labor is authorized to pursue claims for prevailing

wages irrespective of whether the contract contained a stipulation. *Id.* (Department of Labor may take assignment of and pursue claims on behalf of laborers who were not paid the prevailing wage.). However, when the contractor did not stipulate with the public body to pay prevailing wages, the contractor cannot be required to pay interest, penalties, fines or punitive damages under the Prevailing Wage Act. 820 ILCS 130/4(a-3); *see also Brandt Constr. Co.*, 376 Ill. App. 3d at 107-08 (3rd Dist. 2007) (affirming trial court finding that contractor was not liable for penalties, interest, or liquidated damages because the public body did not provide notice of changes in prevailing wage rate). Because the Prevailing Wage Act provides private parties with a right of action in limited circumstances (that are not present here), the Court should not expand the remedies available to Plaintiffs by allowing them to proceed with their claims, when the contracts at issue did not contain the required stipulation directing Moore Landscapes to pay Plaintiffs at a prevailing wage rate. *See Cement Masons Pension Fund, Local 803 v. William A. Randolph, Inc.*, 358 Ill. App. 3d 638, 642 (1st Dist. 2005) (a court should not allow for additional claims or remedies under a statutory provision that provides only a limited right of action).

In short, the trial court's finding that the contracts at issue did not contain a stipulation to pay prevailing wages did not have any bearing on whether Plaintiffs should or should not have been paid at a prevailing wage rate for the work at issue in this case. The trial court's ruling only addressed who, under the Prevailing Wage Act, was authorized to bring a lawsuit to collect whatever might be due to the Plaintiffs, if anything. (C 179). Because the contracts did not include a stipulation, Plaintiffs do not have a right of action under the statute. As discussed in greater detail below, Plaintiffs' arguments on appeal fail to account for the enforcement mechanisms contained within the Prevailing Wage Act.

From a practical perspective, the Court should recognize that Moore Landscapes would not have paid Plaintiffs at a prevailing wage rate was because, based on the guidance Plaintiffs cited in their own brief and that the Park District attached to one of the contracts at issue (C 226-227), Moore Landscapes disagrees that the landscaping work performed by Plaintiffs was covered by the Prevailing Wage Act. In order to determine whether Plaintiffs were, in fact, entitled to be paid at a prevailing wage rate, the trial court would be required to conduct an audit of the work these individuals performed over the course of several years, and compare these jobs against the Illinois Department of Labor's guidance as to when landscaping work is covered by the statute. (C 226-227). This is precisely the type of a claim that the statute authorizes the Department of Labor, but not individual employees, to conduct. *See* 820 ILCS 140/6, 10, 11.

Within the context of the statute and its enforcement mechanisms, the trial court's reliance on the Illinois Department of Labor's interpretation of the Prevailing Wage Act was correct and should be affirmed. As noted, the Department of Labor is the agency tasked by the Legislature to enforce the Prevailing Wage Act. Consistent with its authority, the Department provided guidance to public bodies as to how public bodies can satisfy their obligations to provide notice to contractors and to obtain a stipulation from contractors to pay prevailing wages, which was quoted above. (*See also* C 179). This guidance unequivocally stated that the conditional language contained in the contracts at issue was not a stipulation that satisfied the requirements of the Act. Because the Illinois Department of Labor is an agency that enforces the Prevailing Wage Act, its interpretation of the statute should be deferred to as evidence of legislative intent. *See Abrahamson v. Ill. Dep't of Prof'l Regulation*, 153 Ill. 2d 76, 87-98 (1992) (An agency's "interpretation expresses an

informed source for ascertaining the legislative intent."). Accordingly, the trial court correctly determined that the contracts at issue did not contain stipulations to pay Plaintiffs at a prevailing wage rate, consistent with the guidance of the Illinois Department of Labor. (C 179). For these reasons as well, the Court should affirm the trial court's order dismissing Plaintiffs' claims.

B. The Court Should Affirm The Trial Court's Order Because Plaintiffs Did Not Provide The Court With A Legally Supported Basis To Reverse The Trial Court's Decision.

It is axiomatic that a trial court cannot be reversed based on an argument that was not presented to it. *See Schilli Leasing, Inc. v. Forum Ins. Co.*, 254 Ill. App. 3d 731, 736 (1st Dist. 1993) ("A trial court cannot err in failing to decide an issue not presented to it for decision."). Moreover, arguments that are not supported by citation to appropriate legal authority are forfeited. *Brown v. Tenney*, 125 Ill. 2d 348, 362 (1988); *see also Rosier v. Cascade Mt., Inc.*, 367 Ill. App. 3d 559, 568 (1st Dist. 2006) (arguments "not supported by adequate legal reasoning and citation to supporting authority" would not be considered). Further, arguments that are not raised in the trial court are forfeited and cannot be raised for the first time on appeal. *Evanston Ins. Co. v. Riseborough*, 2014 IL 114271, ¶ 36 (Plaintiff "forfeited the argument" by not raising it in opposition to the defendant's motion to dismiss).

In its motion to dismiss, Moore Landscape demonstrated that the Illinois Department of Labor had provided guidance to public bodies governed by the Prevailing Wage Act that described how a public body could satisfy its obligation to obtain a stipulation from a contractor to pay prevailing wages. (C 127-128). The Department of Labor's guidance specifically pointed out that the language included in each of the contracts at issue did not constitute a required stipulation, as the contracts only stated that

Moore Landscapes would pay prevailing wages when required. (C 126). Moore Landscapes further established that the trial court should give deference to the Illinois Department of Labor, because that agency is charged with enforcing the requirements of the Prevailing Wage Act. *See Abrahamson v. Ill. Dep't of Prof'l Regulation*, 153 Ill. 2d 76 (1992) (Courts regularly give substantial weight and deference to an agency's interpretation of a statute it is empowered to apply.). Moore Landscapes further established that the private right of action set forth in Section 11 of the Act does not allow for Plaintiffs to pursue a claim when the contracts at issue did not include the stipulation required by the Act. (C 129-130).

Plaintiffs did not address any of these points in their response to Moore Landscapes' motion to dismiss. (C 135-145). They did not provide the trial court with a legal argument to dispute the Illinois Department of Labor's guidance on what constitutes a stipulation. Nor did they provide the trial court with any legal argument to refute that the trial court should defer to the agency's interpretation of the statute, especially given that the trial court had been provided with no legally supported basis to disregard the agency's guidance. Because Plaintiffs failed to address these issues, the Court should find that Plaintiffs' waived their opportunity to contest the basis for the trial court's ruling in this case. This finding of waiver provides the Court with an independent basis to affirm the trial court's ruling. *See Evanston Ins. Co.*, 2014 IL 114271 ¶ 36.

In addition, the public policy arguments that Plaintiffs have asserted throughout their brief are fundamentally inaccurate, as Plaintiffs' argument incorrectly assumes that Plaintiffs were the only ones who have the ability to pursue their claims and that they have no other remedies to pursue the relief that they seek. (App. Br. p. 4). The entire gist of

their argument is that this Court should allow their claims to go forward because Plaintiffs would otherwise have no other means to pursue their claims for prevailing wages. (App. Br. p. 7). As Moore Landscapes previously established, these contentions are untrue, as the Prevailing Wage Act vests the Illinois Department of Labor with the authority to enforce the Act's requirements. 820 ILCS 130/6, 11. Indeed, the *Brandt Construction Co.* and the *Sackville Construction* decisions cited by Plaintiffs are examples of lawsuits that had been brought by the Illinois Department of Labor on behalf of employees, and not cases that were brought by private parties. *Brandt Construction Co. v. Ludwig*, 376 Ill. App. 3d 94, 107 (3rd Dist. 2007); *People ex rel. DOL v. Sackville Construction, Inc.*, 402 Ill. App. 3d 195, 203 (3rd Dist. 2010). These cases contradict Plaintiffs' arguments that the trial court should allow them to proceed with their claims because they would otherwise be unable to obtain relief under the Prevailing Wage Act.

The issue addressed by the trial court was not, as Plaintiffs inaccurately contend, whether Plaintiffs were entitled to be paid at prevailing wage rate; the trial court only addressed the narrower issue of whether the Plaintiffs were authorized by statute to prosecute a claim under Section 11 of the Prevailing Wage Act, given that the contracts at issue did not contain a stipulation, as reflected by Illinois Department of Labor guidance. (C 179). Because Plaintiffs base their appeal on the inaccurate premise that that the only way that they can obtain redress is through this lawsuit, without otherwise demonstrating how the trial court erred, the Court should reject Plaintiffs arguments and affirm the decision of the trial court. *See Rosier*, 367 Ill. App. 3d at 568 (arguments unsupported by legal authority should be disregarded). For these reasons as well, Moore Landscapes respectfully requests that the Court affirm the decision of the trial court.

VI. CONCLUSION

For the foregoing reasons, Defendant-Appellee, Moore Landscapes, LLC, respectfully requests that this Court affirm the Circuit Court's Order granting its motion to dismiss.

Dated: July 24, 2019

Respectfully submitted,

MOORE LANDSCAPES, LLC,
Defendant-Appellee

By: /s/ Peter J. Gillespie
Peter J. Gillespie
One of Its Attorneys

Peter J. Gillespie
Brian K. Jackson
Laner Muchin, Ltd.
515 North State Street, Suite 2800
Chicago, Illinois 60654
(312) 467-9800 / (312) 467-9479 (fax)
pgillespie@lanermuchin.com
bjackson@lanermuchin.com
Attorneys for Defendant-Appellee, Moore Landscapes, LLC

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the appendix pages, the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) Certificate of Compliance, the Certificate of Service, and those matters to be appended under Rule 342(a), is 13 pages.

/s/ Peter J. Gillespie

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, Peter J. Gillespie, certifies that the statements set forth in this Certificate of Service are true and correct, and that he took steps to cause the enclosed **Appellee's Brief** to be served on the parties of record listed below via email and to be filed with the Clerk of the Appellate Court via electronic filing on this 24th day of July, 2019 addressed to:

/s/ Peter J. Gillespie

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No. 1-19-0185

IN THE APPELLATE COURT
FIRST DISTRICT

SAMUEL VALERIO, ET AL.,
Plaintiffs-Appellants

v.

MOORE LANDSCAPING, INC.
Defendant-Appellee

Appeal from the Circuit Court of Cook County, Illinois
County Department, Law Division
Case No. 18 L 9656
The Honorable Judge Brennan, Judge Presiding

REPLY BRIEF

/S/ Robert Habib
ROBERT HABIB

ROBERT HABIB & BRUNELL DONALD-KYEI
Attorneys for Plaintiffs
77 W. Washington Street, Suite 1507
Chicago, IL 60602
(312) 201-1421
Attorney No. 13519 & 46088
Robhabib77@gmail.com

ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

STATUTES

REPLY BRIEF

I. THE PREVAILING WAGE STATUTE MANDATES THAT ALL WORKERS EMPLOYED ON PUBLIC WORKS PROJECTS BE PAID THE PREVAILING WAGE

Neither the trial Court in its decision granting the Motion to Dismiss, nor the Appellee in its Brief, can find a single case in support of their position that the plaintiffs could not sue under 820 ILCS/ 130-11. Furthermore neither the trial Court nor the Appellee could cite any case which contradicts the strong public policy behind the Prevailing Wage Statute in support of workers such as the plaintiffs in the instant case.

There is a reason why the Legislature passes a statute, People v. Maya, 105 Ill 20281 (1985). As set forth in Section 1 of the Illinois Prevailing Wage Act 820 ILCS 130/1, the statute clearly indicates the public policy of this State that workers and laborers engaged in Public works on behalf of Public bodies be paid by the prevailing wage, as set forth by the Department of Labor.

The intent of the Prevailing Wage Act is to ensure that on public works projects, no contractor or subcontractor can pay workers less than the going rate, the prevailing wage, Frye v. City of Iroquois , 140 Ill. App. 3d. 749, 489 N.E. 406 (3RD Dist. 1986).

In this case there is no question but that:

1) Plaintiffs were laborers (tree planters) engaged in public works for the Chicago Park District.
2) Their employer Moore Landscaping had contracts with the Park District and had agreed, in paragraph 32 of the contracts, to pay all persons employed by Moore Landscaping, prevailing wages where applicable

3) Moore Landscaping was paying plaintiffs $18.25 rather than the $41.20 per hour, which is the prevailing wage as set by the Department of Labor.

Given these undisputed facts one would have thought it was clear that plaintiffs enjoyed the benefit and the protection of the Prevailing Wage Statute. Appellee in its Brief does not dispute these facts, nor does it dispute that it is the public policy of Illinois that workers engaged in labor on public projects be paid the prevailing wage.

Instead Appellee argues that the prevailing wage was not required by the Department of Labor, in this case, pointing to an FAQ, which it misconstrued.

Again appellee could not cite a single case in support of its argument. No Illinois court has stated that workers engaged in public works not be given the benefit of the statute.

What Appellee does attempt to argue is a mistaken view of 820 ILCS 130-4, that in the Contracts at issue, the Department of Labor did not require that the plaintiff be paid the prevailing wage. However 820 ILCS/130-4 provides in pertinent part.

"The failure of a public body or other entity to provide written notice does not relieve the contractor of the duty of comply with the prevailing wage statute, nor of the obligation to pay any back wages as determined under this act."

A case cited by plaintiffs in their Brief, but ignored by the Appellee, is Contreras v. Central Resource Corp., 680 F. Supp. 289 (N.D.IL. 1988). In Contreras Supra, the Plaintiffs sued claiming they had not been paid the prevailing wage. The defendant moved for summary Judgment, claiming that the Prevailing wage was not mandated by the contract, and that the contract, even if it contained a provision calling

for payment of the prevailing wage, did not specify what the prevailing wages for workers in the plaintiffs' position would be.

The District Court rejected both these arguments, holding that, as this was a public project, the prevailing wage was required. Furthermore as to the argument that the contract did not specify what the prevailing wage would be, the District Court responded "if a contract contains a general prevailing wage provision and the prevailing wage has been determined by either the public body or the Department of Labor, the contractor was bound to pay the Contractor's relevant employees that specified wage."

Contreras, Supra is on point with the instant case. Moreover other cases cited by plaintiffs appellees in their brief. Brandt Construction Co. v. Ludwig, 376 Ill. App. 3d. 94, 878 N.E. 2D. 116 (3RD Dist. 2007) and People ex rel v. Sackville Construction, 402 Ill. App. 3d. 195, 930 N.E. 2d 1063 (1st Dist. 2010) both stand for the proposition that, regardless of the claimed lack of notice received by the Contractor or subcontractor, the employees have to receive the prevailing wage and their back wage.

Again both cases were not distinguished by the Appellee in its Brief.

II. PLAINTIFFS COULD SUE FOR THEIR PREVAILING WAGE PURSUANT TO 820 ILCS 130/11

820 ILCS 130/11 gives workers and laborers a private right of action when they have not been paid the prevailing wage. The language used in the statute uses the term" was stipulated rates for work done under the contracts."

This clearly applies to the rates set forth for such work by the Department of Labor. This was the holding by the District Court in Contreras v. Central Resource Corp.

Supra. To hold otherwise, as the trial Court did and as the Appellee insists would gut or negate the whole purpose of the statute.

After all if the actual wage rates were set forth in the contract then there would be no need for the statute, as the worker could sue on the contract itself, without seeking the benefit of the Prevailing Wage Statute.

The very purpose of the Prevailing Wage Statute is to ensure that the workers receive a decent wage. People ex rel Bernard v. Illinois Community Hospital, 163 Ill. App 3d. 987, 516 N.E. 2d. 1320 (4th District 1987).

To claim that the terms "stipulated" requires that the wages rates have to be set forth in a contract, which already provided that the prevailing wages was to be paid, was pure error on the trial court.

The Prevailing Wage Statute, as set forth above is not to be so narrowly construed. Both the Legislature and every Illinois Court which has construed the Prevailing Wage Statute has done so liberally in favor of workers such as the plaintiffs in this case. So should this reviewing court so as to allow these workers their day in court.

CONCLUSION

The Trial Court should be reversed and the case remanded for trial or further proceedings.

/s/ Robert Habib
ROBERT HABIB

ATTORNEY No. 13519
ROBERT HABIB
ATTORNEY FOR PLAINTIFF-APPELLANTS
77 W. WASHINGTON ST. SUITE 1507
CHICAGO, IL 60602
312-201-1421
ROBHABIB77@GMAIL.COM

CERTIFICATE OF COMPLIANCE

I, Attorney Robert Habib, certify that this Reply Brief to the Appellate Court conforms to the Requirements of Rule 341 (a) and (b). The length of Rule 341 (a) and (b). The length of the Brief, excluding the pages containing the Rule 341 (d) cover, the Rule 315 (c)(2) Statement of Dates, the Rule 315 (c) (3) statement of Points and Authorities, the Rule 341 (c) certificate of compliance, the certificate of service, and the matters appended to the Reply Brief under Rule 342 (a) is 5 pages.

/s/ Robert Habib
ROBERT HABIB

ROBERT HABIB
Attorney for Defendant-Appellant
77 W. Washington Street, Suite 1507
Chicago, IL 60602
(312) 201-1421
Attorney No. 13519
Robhabib77@gmail.com

NO. 1-19-0185

IN THE
ILLINOIS APPELLATE COURT
FIRST DISTRICT

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – LAW DIVISION

SAMUEL VALERIO ET AL.,	)
	)
Plaintiff-Appellee,	)
	) NO. 2018 L 9656
-vs-	)
	)
MOORE LANDSCAPING, INC.,	)
	)
Defendant-Appellants.	)

NOTICE OF FILING

TO: **Laner Muchin, LTD**
Email: bjackson@lanermuchin.com

TAKE NOTICE that on the 9TH day of August 2019, the filed Appellant's Reply Brief with the Odyssey Efile System, with the Appellate Court.

/s/ Robert Habib
ROBERT HABIB

ROBERT HABIB
Attorney for Plaintiff-Appellants
77 W. Washington St., #1507
Chicago, IL 60602
(312) 201-1421
robhabib77@gmail.com

PROOF OF SERVICE

I, ROBERT HABIB, certify that I served the Reply Brief to Defendant-Appellant, Laner Muchin, Ltd, 515 N. State, 2800, Chicago, IL 60654, by email, by initiating the transmission and transmitting the documents via attachment on the 9th of August 2019, to the following email address: bjackson@lanermuchin.com

/s/ Robert Habib
ROBERT HABIB

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COUNTY DEPARTMENT – LAW DEPARTMENT

SAMUEL VALERIO, JOSE PAZ, RUBEN GARCIA, BARDOMIANO PAZ, EVARISTO VALERIO, LUIS MONDRAGON, SERGIO APARICIO, RAUL BERMUDEZ, RODRIGO VALERIO, JAVIER MORA MARCOS HUERTA, JAIME MORA	)	NO. 2018L009656
Plaintiffs,	)	
-vs-	)	
MOORE LANDSCAPES, LLC.	)	
Defendant.	)	

COMPLAINT FOR FAILURE TO PAY PREVAILING WAGE

NOW COMES, Plaintiffs, Samuel Valerio, Jose Paz, Ruben Garcia, Bardomiano Paz, Evaristo Valerio, Luis Mondragon, Sergio Aparicio, Raul Bermudez, Rodrigo Valerio, Javier Mora, Marcos Huerta, and Jaime Mora by and through their attorney, ROBERT HABIB, and complains of the defendant Moore Landscapes, LLC. for failure to pay Plaintiffs the prevailing wage for laborers, in violation of Defendant's Contract with the Chicago Park District and other Public Bodies, pursuant to the Illinois Prevailing Wage Act (IPWA), 820 ILCS § 130/1 *et seq.*, and states as follows:

NATURE OF PLAINTIFF CLAIMS

1. This lawsuit arises under the Illinois Prevailing Wage Act (IPWA) 820 ILCS §130/1, *et seq.* ("IPWA"). Specifically, Defendants have violated the IPWA by paying Plaintiff and all similarly situated servers employed by Defendants, less than the prevailing wage.

JURISDICTION

2. This action is brought pursuant to the Illinois Prevailing Wage Act 820 ILCS§ 1331. Furthermore, the contracts employing Plaintiffs were with the Chicago Park District, and other public entities located in Cook County, Illinois.

PARTIES

3. Plaintiff Samuel Valerio resides in Northbrook, Illinois and is an employee of Defendant. Plaintiff has worked as a tree planter for Moore Landscapes, Inc., since 1972. Since 2014, Plaintiff was generally paid an hourly rate that is less than the prevailing wage of $41.20.

4. Plaintiff Jose Paz resides in Franklin Park, Illinois and is an employee of Defendant. Plaintiff has worked as a tree planter for Moore Landscapes, Inc., since 2006. Since 2014, Plaintiff was generally paid an hourly rate that is less than the prevailing wage of $41.20.

5. Plaintiff Bardomiano Paz resides in Chicago, Illinois and is an employee of Defendant. Plaintiff has worked as a tree planter for Moore Landscapes, Inc., since 2006. Since 2014, Plaintiff was generally paid an hourly rate that is less than the prevailing wage of $41.20.

6. Plaintiff Ruben Garcia resides in Chicago, Illinois and is an employee of Defendant. Plaintiff has worked as a tree planter for Moore Landscapes, Inc., since April 2015. Since 2015, Plaintiff was generally paid an hourly rate that is less than the prevailing wage of $41.20.

7. Plaintiff Evaristo Valerio resides in Chicago, Illinois and is an employee of Defendant. Plaintiff has worked as a tree planter for Moore Landscapes, Inc., since 1973. Since 2014, Plaintiff was generally paid an hourly rate that is less than the prevailing wage of $41.20.

8. Plaintiff Luis Mondragon resides in Round Lake Beach, Illinois and is an employee of Defendant. Plaintiff has worked as a tree planter for Moore Landscapes, Inc., since March 2016. Since 2016, Plaintiff was generally paid an hourly rate that is less than the prevailing wage of $41.20.

9. Plaintiff Sergio Aparicio resides in Chicago, Illinois and is an employee of Defendant. Plaintiff has worked as a tree planter for Moore Landscapes, Inc., since May 2016. Since 2016, Plaintiff was generally paid an hourly rate that is less than the prevailing wage of $41.20.

10. Plaintiff Raul Bermudez resides in Illinois and is an employee of Defendant. Plaintiff has worked as a tree planter for Moore Landscapes, Inc., since 1983. Since 2014, Plaintiff was generally paid an hourly rate that is less than the prevailing wage of $41.20.

11. Plaintiff Rodrigo Valerio resides in Kenosha, Wisconsin and is an employee of Defendant. Plaintiff has worked as a tree planter for Moore Landscapes, Inc., since 1984. Since 2014. Plaintiff was generally paid an hourly rate that is less than the prevailing wage of $41.20.

12. Plaintiff Javier Mora resides in Chicago, IL and is an employee of Defendant. Plaintiff has worked as a tree planter for Moore Landscapes, Inc., on or about April 2012. Since 2014. Plaintiff was paid an hourly rate that is less than the prevailing wage of $41.20.

13. Plaintiff Marcos Huerta resides in Round Lake Beach, IL and is an employee of Defendant. Plaintiff has worked as a tree planter for Moore Landscapes, Inc., since 2016. Since 2014, Plaintiff was generally paid an hourly rate that is less than the prevailing wage of $41.20.

14. Plaintiff Jaime Mora resides in Chicago, IL and is an employee of Defendant. Plaintiff has worked as a tree planter for Moore Landscapes, Inc., on or about June 2012. Since 2014, Plaintiff was generally paid an hourly rate that is less than the prevailing wage of $41.20.

15. The defendant Moore Landscapes, LLC. located in Northbrook, Illinois enters into contract with public bodies such as The Chicago Park District and the City of Chicago to perform landscaping and related work for the public entities.

16. The contract entered into between defendant Moore Landscapes, LLC. and the Chicago Park District for the year 2012 until March 31, 2015 attached as Exhibit A. The defendant also had a contract with the Chicago Park District from April 1, 2015 to February, 2018 attached as Exhibit B. Thereafter, Defendant entered into another contract with the Park District on 2/21/2018 (Exhibit C). Each contract expressly provides that defendant Moore Landscapes, LLC. has to pay its employees involved in work the prevailing rate in accordance with the Illinois.

17. Further, the State of Illinois has enacted the Illinois the Prevailing Wage Act under 820 ILCS Section 130/1, et. seq. which provides in pertinent part:

> "Sec. 1. It is the policy of the State of Illinois that a wage of no less than the general prevailing hourly rate as paid for work of a similar character in the locality in which the work is performed, shall be paid to all laborers, workers and mechanics employed by or on behalf of any and all public bodies engaged in public works."

18. The Prevailing Wage Act is applicable to the defendant Moore Landscaping, LLC.'s contract with the Chicago Park District.

19. Furthermore, 820 ILCS 130/4 provides the Prevailing Wage rate for the work to be set by the Department of labor for each craft or type of worker needed to execute the contract.

20. The prevailing wage for laborers is set by the Department of Labor at $41.20 per hour (Exhibit D).

21. The defendant is in breach of contract and Illinois Law set forth above, by paying Plaintiffs and other defendant employees $18.00 per hour instead of the $41.20 per hour prevailing wage.

22. The Prevailing Wage Statute 820 ILCS 130/11 further provides for a private right of action by workers employed under the contract, who have been paid less that the stipulated rates for the work done on the contract.

23. That said statute further provides that an employer found liable for paying employees less than the prevailing wage is also liable for reasonable attorney fees; punitive damages as set for in the statute, and additional monies owed to the Department of Labor.

24. At all relevant times Plaintiffs complied with all work required of them by their contract with defendant, Moore Landscapes, LLC.

25. Plaintiffs never consented in writing or otherwise to be paid less than the prevailing wage.

COUNT I

Violation of the Prevailing Act (Jose Paz)

26. Plaintiff, JOSE PAZ, brings this action pursuant 820 ILCS 130/1 et. seq..

27. The matters set forth in this Count arise from Defendant's violations of the Prevailing Wage Act, 820 ILCS 130/1 et seq., and the contracts entered into by Defendant with the Park District.

28. Plaintiff was entitled to be paid a prevailing wage, pursuant to the contracts, and the Statute of $41.20 per hour.

29. Defendant violated the Illinois Prevailing Wage Act, 820 ILCS 130/1, and the contract by refusing to pay Plaintiff the prevailing wages, and paying him $18.00 per hour.

30. Plaintiff has been affected by Defendant's practices, specifically their failure to properly pay prevailing wages.

31. Pursuant to 820 ILCS 130/11 Plaintiff is entitled to recover unpaid wages for five years prior to the filing of this suit, plus punitive damages in the amount of two percent (2%) per month of the amount of underpayments.

WHEREFORE, Plaintiff, Jose Paz, respectfully requests this Court to enter an Order as follows:

A. Enjoining Defendant from violating the IPWA;

B. Restitution for the full prevailing wage due to JOSE PAZ;

C. Prejudgment interest on back pay in accordance with 820 ILCS 130/11;

D. Statutory damages pursuant to 820 ILCS 130/11;

E. Reasonable attorneys' fees and costs incurred in conjunction with the instant action pursuant to 820 ILCS 130/11; and

F. Such additional relief as the Court deems just and appropriate under the circumstances.

COUNT II

Violation of the Prevailing Wage Act (Samuel Valerio)

Paragraphs 1 - 25 are re-alleged and incorporated as though set forth fully herein.

26. Plaintiff, Samuel Valerio brings this action pursuant to 820 ILCS 130/1 et. seq..

27. The matters set forth in this Count arise from Defendant's violations of the Prevailing Wage Act, 820 ILCS 130/1, and the contracts entered into with the Park District.

28. Plaintiff was entitled to be paid prevailing wage, pursuant to the contracts, and the Statute of $41.20 per hour.

29. Defendant violated the Illinois Prevailing Wage Act, 820 ILCS 130/6, by refusing to pay Plaintiff a prevailing wage, and paying him only $18.00 per hour.

30. Plaintiff has been affected by Defendant's practices, specifically their failure to properly pay prevailing wage.

31. Pursuant to 820 ILCS 130/11 Plaintiff, Valerio is entitled to recover unpaid wages for three years prior to the filing of this suit, plus punitive damages in the amount of two percent (2%) per month of the amount of underpayments.

WHEREFORE, Plaintiff, Samuel Valerio, respectfully requests this Court to enter an Order as follows:

A. Enjoining Defendant from violating the IPWA;

B. Restitution for the full prevailing wage due to the tree planters and all others similarly situated under the IPWA;

C. Prejudgment interest on back pay in accordance with 820 ILCS 130/11;

D. Statutory damages pursuant to 820 ILCS 130/11;

E. Reasonable attorneys' fees and costs incurred in conjunction with the instant action pursuant to 820 ILCS 130/11; and

F. Such additional relief as the Court deems just and appropriate under the circumstances.

COUNT III

Violation of the Prevailing Wage Act (Bardomiano Paz)

Paragraphs 1 - 25 are re-alleged and incorporated as though set forth fully herein.

26. Plaintiff, Bardomiano Paz, brings this action pursuant to 820 ILCS 130/1 et. seq., and the contract entered into with the Park District.

27. The matters set forth in this Count arise from Defendant's violations of the Prevailing Wage Act, 820 ILCS 130/6, and contracts with the Park District.

28. Plaintiff is entitled to be paid prevailing wage of $41.20 per hour.

29. Defendant violated the Illinois Prevailing Wage Act, 820 ILCS 130/6, by refusing to pay Plaintiff a prevailing wage, and paying him only $18.00 per hour.

30. Plaintiff has been affected by Defendant's practices, specifically their failure to properly pay prevailing wage.

31. Pursuant to 820 ILCS 130/11 Plaintiff is entitled to recover unpaid wages for five years prior to the filing of this suit, plus punitive damages in the amount of two percent (2%) per month of the amount of underpayments.

WHEREFORE, Plaintiff, Bardomiano Paz, respectfully requests this Court to enter an Order as follows:

A. Enjoining Defendant from violating the IPWA;

B. Restitution for the full prevailing wage due to the tree planters and all others similarly situated under the IPWA;

C. Prejudgment interest on back pay in accordance with 820 ILCS 130/11;

D. Statutory damages pursuant to 820 ILCS 130/11;

E. Reasonable attorneys' fees and costs incurred in conjunction with the instant action pursuant to 820 ILCS 130/11; and

F. Such additional relief as the Court deems just and appropriate under the circumstances.

COUNT IV

Violation of the Prevailing Wage Act (Sergio Aparicio)

Paragraphs 1 - 25 are re-alleged and incorporated as though set forth fully herein.

26. Plaintiff, Sergio Aparicio, brings this action pursuant to 820 ILCS 130/1 et. seq., and the contract entered into with the Park District

27. The matters set forth in this Count arise from Defendant's violations of the prevailing wage, 820 ILCS 130/1, and the contracts with the Park District.

28. Plaintiff is entitled to be paid prevailing wage of $41.20 per hour.

29. Defendant violated the Illinois Prevailing Wage Act, 820 ILCS 130/6, by refusing to pay Plaintiff a prevailing wage and paying him only $18.00 per hour.

30. Plaintiff has been affected by Defendant's practices, specifically their failure to properly pay prevailing wage.

31. Pursuant to 820 ILCS 130/11 Plaintiff is entitled to recover unpaid wages for three years prior to the filing of this suit, plus punitive damages in the amount of two percent (2%) per month of the amount of underpayments.

WHEREFORE, Plaintiff, Sergio Aparicio, respectfully requests this Court to enter an Order as follows:

A. Enjoining Defendant from violating the IPWA;

B. Restitution for the full prevailing wage due to the tree planters and all others similarly situated under the IPWA;

C. Prejudgment interest on back pay in accordance with 820 ILCS 130/11;

D. Statutory damages pursuant to 820 ILCS 130/11;

E. Reasonable attorneys' fees and costs incurred in conjunction with the instant action pursuant to 820 ILCS 130/11; and

F. Such additional relief as the Court deems just and appropriate under the circumstances.

COUNT V

Violation of the Prevailing Wage Act (Rodrigo Valerio)

Paragraphs 1 - 25 are re-alleged and incorporated as though set forth fully herein.

26. Plaintiff, Rodrigo Valerio, brings this action pursuant to 820 ILCS 130/1 et. seq. and the contracts with the Park District.

27. The matters set forth in this Count arise from Defendant's violations of the Prevailing Wage Act, 820 ILCS 130, and the Park District Contracts.

28. Plaintiff is entitled to be paid prevailing wage of $41.20 per hour.

29. Defendant violated the Illinois Prevailing Wage Act, 820 ILCS 130/6, by refusing to pay Plaintiff a prevailing wage, and instead paying $18.00 per hour.

30. Plaintiff has been affected by Defendant's practices, specifically their failure to properly pay prevailing wage.

31. Pursuant to 820 ILCS 130/11 Plaintiff is entitled to recover unpaid wages for five years prior to the filing of this suit, plus punitive damages in the amount of two percent (2%) per month of the amount of underpayments.

WHEREFORE, Plaintiff, Rodrigo Valerio, respectfully requests this Court to enter an Order as follows:

A. Enjoining Defendant from violating the IPWA;

B. Restitution for the full prevailing wage due to the tree planters and all others similarly situated under the IPWA;

C. Prejudgment interest on back pay in accordance with 820 ILCS 130/11;

D. Statutory damages pursuant to 820 ILCS 130/11;

E. Reasonable attorneys' fees and costs incurred in conjunction with the instant action pursuant to 820 ILCS 130/11; and

F. Such additional relief as the Court deems just and appropriate under the circumstances.

COUNT VI

Violation of the Prevailing Wage Act (Ruben Garcia)

Paragraphs 1 -25 are re-alleged and incorporated as though set forth fully herein.

26. Plaintiff, Ruben Garcia, brings this action pursuant to 820 ILCS 130/1 et. seq. and the contracts with the Park District.

27. The matters set forth in this Count arise from Defendant's violations of the Prevailing Wage Act, 820 ILCS 130/6, and the Park District contracts.

28. Plaintiff is entitled to be paid prevailing wage, pursuant to the contracts, and the Statute of $41.20 per hour.

29. Defendant violated the Illinois Prevailing Wage Act, 820 ILCS 130/6, by refusing to pay Plaintiff a prevailing wage, and. paying only $18.00 per hour.

30. Plaintiff has been affected by Defendant's practices, specifically their failure to properly pay prevailing wage.

31. Pursuant to 820 ILCS 130/11 Plaintiff is entitled to recover unpaid wages for five years prior to the filing of this suit, plus punitive damages in the amount of two percent (2%) per month of the amount of underpayments.

WHEREFORE, Plaintiff, Ruben Garcia, respectfully requests this Court to enter an Order as follows:

A. Enjoining Defendant from violating the IPWA;

B. Restitution for the full prevailing wage due to the tree planters and all others similarly situated under the IPWA;

C. Prejudgment interest on back pay in accordance with 820 ILCS 130/11;

D. Statutory damages pursuant to 820 ILCS 130/11;

E. Reasonable attorneys' fees and costs incurred in conjunction with the instant action pursuant to 820 ILCS 130/11; and

F. Such additional relief as the Court deems just and appropriate under the circumstances.

COUNT VII

Violation of the Prevailing Wage Act (Evaristo Valerio)

Paragraphs 1 - 25 are re-alleged and incorporated as though set forth fully herein.

26. Plaintiff, Evaristo Valerio, brings this action pursuant to 820 ILCS 130/1 et. seq., and the contracts with the Park District.

27. The matters set forth in this Count arise from Defendant's violations of the Prevailing Wage Act, 820 ILCS 130/1, and the Park District contracts.

28. Plaintiff is entitled to be paid prevailing wage, pursuant to the contracts, and the Statute of $41.20 per hour.

29. Defendant violated the Illinois Prevailing Wage Act, 820 ILCS 130/6, by refusing to pay Plaintiff a prevailing wage, and instead paying him $18.00 per hour.

30. Plaintiff has been affected by Defendant's practices, specifically their failure to properly pay prevailing wage.

31. Pursuant to 820 ILCS 130/11 Plaintiff is entitled to recover unpaid wages for five years prior to the filing of this suit, plus punitive damages in the amount of two percent (2%) per month of the amount of underpayments.

WHEREFORE, Plaintiff, Evaristo Valerio, respectfully requests this Court to enter an Order as follows:

A. Enjoining Defendant from violating the IPWA;

B. Restitution for the full prevailing wage due to the tree planters and all others similarly situated under the IPWA;

C. Prejudgment interest on back pay in accordance with 820 ILCS 130/11;

D. Statutory damages pursuant to 820 ILCS 130/11;

E. Reasonable attorneys' fees and costs incurred in conjunction with the instant action pursuant to 820 ILCS 130/11; and

F. Such additional relief as the Court deems just and appropriate under the circumstances.

COUNT III

Violation of the Prevailing Wage Act (Luis Mondragron)

Paragraphs 1 - 25 are re-alleged and incorporated as though set forth fully herein.

26. Plaintiff, Luis Mondragron, brings this action pursuant to 820 ILCS 130/1 et. seq. and the contracts with the Park District.

27. The matters set forth in this Count arise from Defendant's violations of the Prevailing Wage Act, 820 ILCS 130/1, and the Park District contracts.

28. Plaintiff is entitled to be paid prevailing wage, pursuant to the contracts, and the Statute of $41.20 per hour.

29. Defendant violated the Illinois Prevailing Wage Act, 820 ILCS 130/6, by refusing to pay Plaintiff a prevailing wage, and paying only $18.00 per hour.

30. Plaintiff has been affected by Defendant's practices, specifically their failure to properly pay prevailing wage.

31. Pursuant to 820 ILCS 130/11 Plaintiff is entitled to recover unpaid wages for five years prior to the filing of this suit, plus punitive damages in the amount of two percent (2%) per month of the amount of underpayments.

WHEREFORE, Plaintiff, Luis Mondragon, respectfully requests this Court to enter an Order as follows:

A. Enjoining Defendant from violating the IPWA;

B. Restitution for the full prevailing wage due to the tree planters and all others similarly situated under the IPWA;

C. Prejudgment interest on back pay in accordance with 820 ILCS 130/11;

D. Statutory damages pursuant to 820 ILCS 130/11;

E. Reasonable attorneys' fees and costs incurred in conjunction with the instant action pursuant to 820 ILCS 130/11; and

F. Such additional relief as the Court deems just and appropriate under the circumstances.

COUNT IX

Violation of the Prevailing Wage Act (Raul Bermudez)

Paragraphs 1 –25 are re-alleged and incorporated as though set forth fully herein.

26. Plaintiff, Sergio Herrera, brings this action pursuant to 820 ILCS 130/1 et. seq., and the contracts with the Park District.

27. The matters set forth in this Count arise from Defendant's violations of the Prevailing Wage Act, 820 ILCS 130/1, and the Park District contracts.

28. Plaintiff is entitled to be paid prevailing wage, pursuant to the contracts, and the Statute of $41.20 per hour.

29. Defendant violated the Illinois Prevailing Wage Act, 820 ILCS 130/6, by refusing to pay Plaintiff a prevailing wage, and instead paying only $18.00 per hour.

30. Plaintiff has been affected by Defendant's practices, specifically their failure to properly pay prevailing wage.

31. Pursuant to 820 ILCS 130/11 Plaintiff is entitled to recover unpaid wages for five years prior to the filing of this suit, plus punitive damages in the amount of two percent (2%) per month of the amount of underpayments.

WHEREFORE, Plaintiff, Raul Bermudez, respectfully requests this Court to enter an Order as follows:

A. Enjoining Defendant from violating the IPWA;

B. Restitution for the full prevailing wage due to the tree planters and all others similarly situated under the IPWA;

C. Prejudgment interest on back pay in accordance with 820 ILCS 130/11;

D. Statutory damages pursuant to 820 ILCS 130/11;

E. Reasonable attorneys' fees and costs incurred in conjunction with the instant action pursuant to 820 ILCS 130/11; and

F. Such additional relief as the Court deems just and appropriate under the circumstances.

COUNT X

Violation of the Prevailing Wage Act (Marcos Huerta)

Paragraphs 1 – 25 are re-alleged and incorporated as though set forth fully herein.

26. Plaintiff, Marcos Huerta, brings this action pursuant to 820 ILCS 130/1 et. seq., and the contracts with the Park District.

27. The matters set forth in this Count arise from Defendant's violations of the Prevailing Wage Act, 820 ILCS 130/1, and the Park District contracts.

28. Plaintiff is entitled to be paid prevailing wage, pursuant to the contracts, and the Statute of $41.20 per hour.

29. Defendant violated the Illinois Prevailing Wage Act, 820 ILCS 130/6, by refusing to pay Plaintiff a prevailing wage, and instead paying only $18.00 per hour.

30. Plaintiff has been affected by Defendant's practices, specifically their failure to properly pay prevailing wage.

31. Pursuant to 820 ILCS 130/11 Plaintiff is entitled to recover unpaid wages for five years prior to the filing of this suit, plus punitive damages in the amount of two percent (2%) per month of the amount of underpayments.

WHEREFORE, Plaintiff, Marcos Huerta, respectfully requests this Court to enter an Order as follows:

A. Enjoining Defendant from violating the IPWA;

B. Restitution for the full prevailing wage due to the tree planters and all others similarly situated under the IPWA;

C. Prejudgment interest on back pay in accordance with 820 ILCS 130/11;

D. Statutory damages pursuant to 820 ILCS 130/11;

E. Reasonable attorneys' fees and costs incurred in conjunction with the instant action pursuant to 820 ILCS 130/11; and

F. Such additional relief as the Court deems just and appropriate under the circumstances.

COUNT XI

Violation of the Prevailing Wage Act (Javier Mora)

Paragraphs 1 – 25 are re-alleged and incorporated as though set forth fully herein.

26. Plaintiff, Javier Mora, brings this action pursuant to 820 ILCS 130/1 et. seq., and the contracts with the Park District.

27. The matters set forth in this Count arise from Defendant's violations of the Prevailing Wage Act, 820 ILCS 130/1, and the Park District contracts.

28. Plaintiff is entitled to be paid prevailing wage, pursuant to the contracts and the Statute of $41.20 per hour.

29. Defendant violated the Illinois Prevailing Wage Act, 820 ILCS 130/6, by refusing to pay Plaintiff a prevailing wage, and instead paying only $18.00 per hour.

30. Plaintiff has been affected by Defendant's practices, specifically their failure to properly pay prevailing wage.

31. Pursuant to 820 ILCS 130/11 Plaintiff is entitled to recover unpaid wages for five years prior to the filing of this suit, plus punitive damages in the amount of two percent (2%) per month of the amount of underpayments.

WHEREFORE, Plaintiff, Javier Mora, respectfully requests this Court to enter an Order as follows:

A. Enjoining Defendant from violating the IPWA;

B. Restitution for the full prevailing wage due to the tree planters and all others similarly situated under the IPWA;

C. Prejudgment interest on back pay in accordance with 820 ILCS 130/11;

D. Statutory damages pursuant to 820 ILCS 130/11;

E. Reasonable attorneys' fees and costs incurred in conjunction with the instant action pursuant to 820 ILCS 130/11; and

F. Such additional relief as the Court deems just and appropriate under the circumstances.

COUNT XII

Violation of the Prevailing Wage Act (Jaime Mora)

Paragraphs 1 – 25 are re-alleged and incorporated as though set forth fully herein.

26. Plaintiff, Jaime Mora, brings this action pursuant to 820 ILCS 130/1 et. seq., and the contracts with the Park District.

27. The matters set forth in this Count arise from Defendant's violations of the Prevailing Wage Act, 820 ILCS 130/1, and the Park District contracts.

28. Plaintiff is entitled to be paid prevailing wage, pursuant to the contracts and the Statute of $41.20 per hour.

29. Defendant violated the Illinois Prevailing Wage Act, 820 ILCS 130/6, by refusing to pay Plaintiff a prevailing wage, and instead paying only $18.00 per hour.

30. Plaintiff has been affected by Defendant's practices, specifically their failure to properly pay prevailing wage.

31. Pursuant to 820 ILCS 130/11 Plaintiff is entitled to recover unpaid wages for five years prior to the filing of this suit, plus punitive damages in the amount of two percent (2%) per month of the amount of underpayments.

WHEREFORE, Plaintiff, Jaime Mora, respectfully requests this Court to enter an Order as follows:

A. Enjoining Defendant from violating the IPWA;

B. Restitution for the full prevailing wage due to the tree planters and all others similarly situated under the IPWA;

C. Prejudgment interest on back pay in accordance with 820 ILCS 130/11;

D. Statutory damages pursuant to 820 ILCS 130/11;

E. Reasonable attorneys' fees and costs incurred in conjunction with the instant action pursuant to 820 ILCS 130/11; and

F. Such additional relief as the Court deems just and appropriate under the circumstances.

Respectfully Submitted,

/s/ Robert Habib

Robert Habib
Attorney for Plaintiff

ROBERT HABIB
Attorney for Plaintiffs
77 W. Washington Street
Suite 1506
Chicago, IL 60602
(312) 201-1421
Attorney No. 13519

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

VERIFICATION BY CERTIFICATION

Under penalties of perjury as provided by law pursuant to Section 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein state to be on information and belief and as to such matters the undersigned certifies as aforesaid that the undersigned verily believes the same to be true.

Samuel Valerio
SAMUEL VALERIO

Jose Paz.
JOSE PAZ

Ruben García
RUBEN GARCIA

Bardomiano Paz
Por Jose Paz
Evaristo Valerio
EVARISTO VALERIO

Luis Mondragon
LUIS MONDRAGON

Sergio Herrera Aparicio
SERGIO HERRERA

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

VERIFICATION BY CERTIFICATION

Under penalties of perjury as provided by law pursuant to Section 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein state to be on information and belief and as to such matters the undersigned certifies as aforesaid that the undersigned verily believes the same to be true.

RODRIGO VALERIO

ROBERT HABIB
Attorney for Plaintiffs
77 W. Washington St.
Suite 1506
Chicago, IL 60602
(312) 201-1421
Attorney No. 13519

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

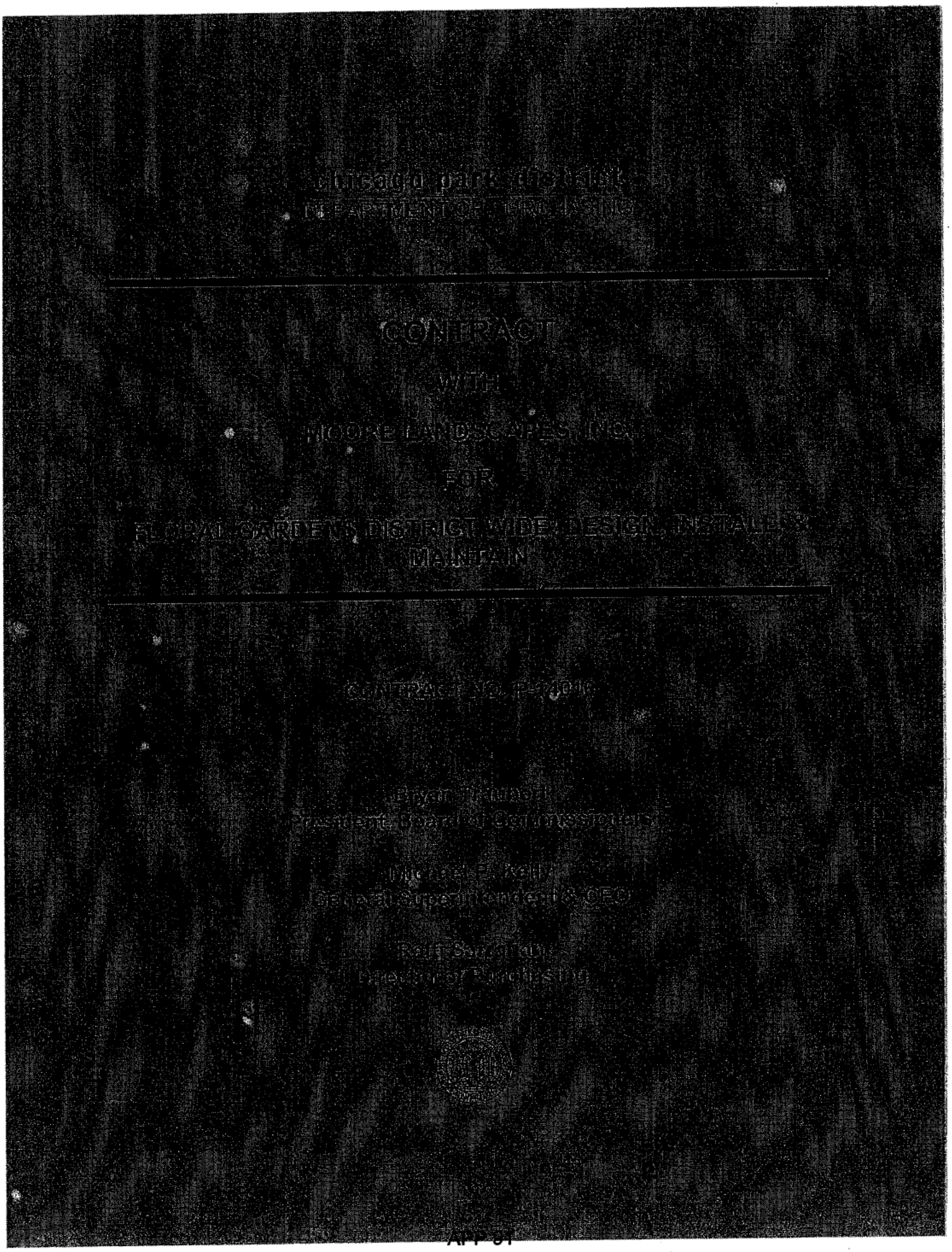
VERIFICATION BY CERTIFICATION

Under penalties of perjury as provided by law pursuant to Section 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein state to be on information and belief and as to such matters the undersigned certifies as aforesaid that the undersigned verily believes the same to be true.

Raúl Bermúdez

RAUL BERMUDEZ

ROBERT HABIB
Attorney for Plaintiffs
77 W. Washington St.
Suite 1506
Chicago, IL 60602
(312) 201-1421
Attorney No. 13519



CHICAGO PARK DISTRICT

DEPARTMENT OF PLANNING

CONTRACT

WITH

MOORE LANDSCAPES, INC.

FOR

FLORAL GARDENS DISTRICT WIDE DESIGN, INSTALL & MAINTAIN

CONTRACT NO. P-7001

Byron P. Rush
President, Board of Commissioners

Michael P. Kelly
General Superintendent & CEO

Ralf Serpe
Director of Purchasing

PROFESSIONAL FLORAL GARDEN DESIGN, INSTALLATION AND MAINTENANCE SERVICES AGREEMENT

This Professional Floral Design, Installation and Maintenance Services Agreement ("Agreement") is effective APRIL 1, 2015, by and between the Chicago Park District, a municipal corporation existing pursuant to 70 ILCS 1505/0.01 *et seq.* of the Illinois Compiled Statutes, (the **"Park District"**) by and through its General Superintendent (the "General Superintendent"), and Moore Landscapes, Inc., an Illinois Corporation, ("**Contractor**"). The Park District and Contractor are sometimes referred to as the "Parties".

RECITALS

Whereas, the Park District owns and manages more than 80 floral gardens in many prominent and historically significant parks; and

Whereas, the Park District wishes to engage a landscape contractor capable of performing floral garden design, installation and maintenance services while meeting the high standards essential for gardens in parks of such prominence and character; and

Whereas, the Park District issued a Request for Proposal for Floral Gardens District Wide: Design, Install, & Maintain (Specification No. P 14016) dated October 1, 2014 (the "**RFP**"), which is incorporated and made part of this Agreement by reference; and

Whereas, the Contractor submitted a proposal in response to the RFP indicating that it has significant specialized knowledge, expertise and experience in providing professional services necessary for the design, installation and maintenance of prominent floral gardens; and

Whereas, on December 10, 2014, the Board of Commissioners of the Park District authorized the General Superintendent or his designee to enter into an Agreement with the Contractor for professional floral garden design, installation and maintenance services.

NOW THEREFORE, in consideration of the agreements, covenants, representations, obligations and privileges herein set forth, and intending to be legally bound hereby, the Park District and Contractor agree as follows:

1. **Scope of Services.**

The Park District hereby engages Contractor to provide professional floral design, installation and maintenance services as set forth herein. The Consultant's responsibilities include design; the procurement, transportation, delivery, and installation of plant material; maintenance of plants and planting beds; and other miscellaneous services as determined by the Park District (the "Services"). This description of Services is intended to be general in nature and is neither a complete description nor a limitation on the Services that Contractor is to provide under this Agreement.

The scope of Services that Contractor is to provide to the Park District include but are not limited to:

A. Standard Services

1) Design of floral gardens
2) Procurement of plant materials
3) Transportation and delivery of plant material
4) Installation of plant material
5) Maintenance of planting beds and plant material

B. Miscellaneous Services

1) Design and install hardscape garden elements
2) Provide and install garden ornamentation
3) Design, install, and/or maintain irrigation systems
4) Provide, install, and maintain ornamental and seasonal lighting, decorations, and/or plant materials
5) Provide turf-related services, including install new seed or sod and repair or renovate existing turf
6) Other miscellaneous services that would fall under the general and reasonable classification of floral garden services

C. Personnel

1) All personnel performing project work must be fully trained and experienced with the type of work being performed. All work requiring specific licensing or certification may only be performed by personnel with the required licensing or certification. All licenses and certification must be current and in good standing during the performance of work.

2) Design Services Personnel

a. At least one design services person assigned to the work must be a registered landscape architect

b. Design services personnel must be able to design floral and other display gardens, review designs with Park District staff, revise drawings as required, and accurately estimate quantities and project costs.

c. Design services personnel should be able to complete special projects including preparation of professional presentation boards for Park District use at various city reviews, donor meetings, and public presentations as well as other specialty work requested.

d. Design services personnel must be proficient in all aspects of landscape and garden design, and be capable of producing detailed drawings and specifications as required for hardscape and other garden elements.

3) Installation, Maintenance and Miscellaneous Project Services Personnel

a. Project manager/crew supervisor

The designated project manager is to be a Landscape Industry Certified Manager (formerly CLP), as certified by Professional Landscape Network ("PLANET").

The designated crew supervisors, if other than the project manager, are to be Landscape Industry Certified Managers (formerly CLP) as certified by PLANET

b. Crew leaders

Crew leaders are to be Landscape Industry Certified Technicians – Exterior (formerly CLT-E) OR Landscape Industry Certified Managers (formerly COLP) as certified by PLANET

Crew leaders applying chemicals with spraying equipment or supervising workers performing this work must have a current Commercial Applicator license as required by the Illinois Department of Agriculture.

c. Crew personnel

Crew personnel performing project work are to be trained in and familiar with types of work being performed. Untrained workers, including unskilled day laborers, will not be acceptable.

Crew personnel applying chemicals with spraying equipment must have a current Commercial Applicator or Commercial Operator license as required by the Illinois Department of Agriculture.

D. Work Locations

Work locations are specified in Exhibit A: Project Sites List and Maps of the RFP ("**Exhibit A**"), which is attached and incorporated herein. During the term of the Agreement, additional sites may be added and existing sites may be deleted.

E. Other Contracts

The Park District has other contracts for services similar to those in the project scope and the Park District reserves the right to use those contracts for the performance of services.

F. Standards for Work

1) At a minimum, all work performed during the term of the Agreement will comply with the following standards:

a) CPD Standard Specifications, Detail Drawings, and Technical Specifications included in the RFP as Exhibit B, incorporated herein
b) Chicago Landscape Ordinance
c) All applicable Americans with Disabilities Act (ADA) codes
d) Chicago Building Code
e) Chicago Energy Code
f) Chicago Standard: Building Healthy, Smart and Green

2) Contractor is responsible for ensuring that all work, including work performed by subcontractors, meets or exceeds required standards and specifications. All specifications are to be applied to all work at all times. In the event of a discrepancy between specifications, the interpretation of the Park District project manager will prevail. Substitutions for or alterations to the specifications included in Exhibit B of the RFP that result in lower standards will not be permitted without the prior approval of the Park District.

3) Any work not performed to the standards, as determined by the Park District, will result in the assessment of cost deductions, by the Park District, to billing associated with the work. Furthermore, any deficient work must be brought up to Park District standards, at no additional cost to the Park District, before full payment to Contractor is authorized.

G. Detailed Scope of Services

Contractor will refer to Exhibit B of the RFP: Specification Section 02930 Floral Garden Services and Specification Section 02935 Floral Garden Maintenance for definitions, detailed descriptions, specifications and required standards.

H. Special Conditions

Special conditions, include but are not limited to the following: contract work responsiveness, safety, proper work documentation, permits, standard (non-emergency) requests, emergency requests, requests for work items or services not specifically detailed in cost proposal, performance requirements, changes of personnel and/or subcontractor during contract term and application for payments.

The procedures and requirements for the special conditions are specified in the Special Conditions section of the RFP, incorporated herein and made a part of this Agreement by reference.

Contractor will comply with special conditions as at all times unless other specific arrangements are made and approved, prior to implementation, by the Park District project manager.

2. **Standard of Performance.**

A. Contractor shall provide an adequate staff of qualified personnel with the necessary management and technical expertise to assure performance of the Services.

B. Contractor must assure that all Services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed, if required by law. Contractor must provide copies of any such licenses. Contractor remains responsible for the professional and technical accuracy of all Services furnished, whether by Contractor or its subcontractors or others on its behalf.

C. Contractor shall plan, schedule and accomplish services so as to cause minimum interference with Park District operations and programs;

D. Contractor must perform all Services required of it under the Agreement with that degree of skill, care and diligence normally shown by a Contractor performing services of a scope, purpose and magnitude comparable with the nature of the Services to be provided under the Agreement.

E. If Contractor fails to comply with foregoing standards, Contractor must perform again, at its own expense, all Services required to be re-performed as a direct or indirect result of that failure. Any review, approval, acceptance or payment for any of the Services by the Park District does not relieve Contractor of its responsibility for the professional skill and care and technical accuracy of its Services. This provision in no way limits the Park District's rights against Contractor either under the Agreement, at law or in equity.

F. The Contractor shall be responsible for any financial losses incurred by improper or negligent work performance at a project site and shall repair or replace and pay for any replacement or damages to new and existing structures, material, equipment, fixtures, appliances and apparatus during the course of work, where such damage is directly due to work under this Agreement, or where such damage is the result of the neglect, or carelessness on the part of the Contractor or its employees, or on the part of the Contractor's subcontractors or its employees.

3. **Compensation and Payment.**

A. Compensation. Contractor will provide to the Park District the Services as set forth in Section 1, and the Park District shall pay Contractor for Services at the rates specified in the Cost Proposal and Unit Pricing sheets, **Exhibit B** of this Agreement, attached and incorporated herein. The total amount that will be paid to Contractor for all Services provided shall not exceed $3,000,000 for the two-year term of the Agreement, and shall not exceed $1,500,000 annually. Extensions to the Agreement will be exercised at the sole option of the Park District, subject to annual budget appropriations.

B. Payments. Contractor will be paid monthly, beginning thirty (30) days from receipt of invoice. An audit to reconcile the shortage or overpayment will be done at the end of the twelve-month cycle, at which time necessary adjustments will be made for the remaining length of the Agreement. Any additional costs, as described in the Special Conditions section of the RFP, incurred by the Contractor will be paid on a monthly basis as they arise. Subsequent payments will be made in the same manner each month in succession for the remaining term of the Agreement.

C. Invoices. Contractor shall submit itemized invoices electronically in pdf form to cpd.lettersigninginvoices@chicagoparkdistrict.com. All submissions must contain the contract specification number, project name, invoice number, invoice cover sheet, summary of projects performed, sworn statement (affidavit), MBE/WBE utilization report, and any other document(s) specifically requested by the architect or Park District project manager. No hard copy invoices should be sent to the Park District and only invoices received through the above email address will be paid by the Park District. Contractor will receive a confirmation email noting only that the documents have been received.

4. **Contract Term.**

The Term of this Agreement begins on APRIL 1, 2015 and will remain in effect for two (2) years. This Agreement may be extended, at the sole option of the Park District, for three (3) additional one (1) year extension periods, subject to annual budget appropriations.

5. **Deliverables.**

A. In carrying out its Services, Contractor shall provide to the Park District various documents and reports, including but not limited to, drawings, presentation boards and other design documents as further specified in the RFP (the "Deliverables").

B. The Park District may reject Deliverables that do not include information required by this Agreement or are reasonably necessary for the purpose for which the Park District made this Agreement or for which the Park District intends to use the Deliverables. If the Park District determines that Contractor has failed to comply with the directions of the Project Manager, or the standards of performance stated in Section 2, the Park District has 30 days from the discovery to notify Contractor of its failure. If Contractor does not correct the failure, if it is possible to do so, within 30 days after receipt of notice from the Park District specifying the failure, then the Park District, by written notice, may treat the

failure as a default under Section 10.

C. Contractor shall not use patented designs owned by others in the preparation of Deliverables, unless Contractor has written authorization to use the patents.

D. All Deliverables become property of the Park District once accepted and may be used by the Park District for any purposes without any further consent by Contractor, regardless of whether the Project for which the Deliverables are made is executed or not. The Park District shall have the right to use such documents on additional projects as the Park District sees fit.

6. Ownership of Park District Data.

All data and information provided or submitted to Contractor by the Park District ("Park District Data") and all confidential information are and shall remain the property of the Park District. Contractor and its employees, agents and subcontractors and their employees and agents shall not:

1) use the Park District Data other than in connection with the performance of the Services;
2) disclose, sell, assign, lease or otherwise provide the Park District Data to third parties; or
3) commercially exploit the Park District Data.

7. Termination for Cause.

The Park District reserves the right to terminate this Agreement in the event Contractor breaches or violates any term or terms of the Agreement documents. In the event of such termination for cause, the Park District shall have the option of paying for services performed and accepted by the Park District that are in compliance with the requirements of this Agreement prior to the date of termination.

8. Termination for Convenience.

The Park District reserves the right to terminate this Agreement in whole or part, without showing cause upon giving written notice to the Contractor. The Park District shall only pay for goods delivered and accepted and/or services performed prior to the date of termination at the related contract unit prices. The Contractor will not be reimbursed for any anticipatory profits, which have not been earned up to the date of the termination

9. Non-Appropriation.

If no funds or insufficient funds are appropriated and budgeted in any fiscal period of the Park District for payments to be made under the Agreement, then the Park District will notify Contractor in writing of that occurrence, and the Agreement will terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under the Agreement are exhausted. Payments for Services completed

to the date of notification will be made to Contractor. No payments will be made or due to Contractor under this Agreement beyond those amounts appropriated and budgeted by the Park District to fund payments under this Agreement.

10. Events of Default Defined.

The following constitute events of default:

A. Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by Contractor to the Park District.

B. Contractor's material failure to perform any of its obligations under the Agreement including the following:

1) Failure due to a reason or circumstances within Contractor's reasonable control to perform the Services with sufficient personnel and equipment or with sufficient material to ensure the performance of the Services;

2) Failure to promptly re-perform within a reasonable time Services that were rejected as erroneous or unsatisfactory;

3) Discontinuance of the Services for reasons within Contractor's reasonable control;

4) Failure to comply with the Park District's terms and conditions as set forth in the RFP;

5) The filing of Contractor of any petition or proceeding under applicable state or federal bankruptcy or solvency law or statute which petition or proceeding has not been dismissed or stayed within thirty (30) days after the date of its filing;

6) The initiation against Contractor by any creditor of an involuntary petition or proceeding under any state or federal bankruptcy or insolvency law or statute, which petition or proceeding is not dismissed within thirty (30) days after the date of filing;

7) The appointment of a receiver for Contractor with respect to all or a portion of its respective assets; or

8) Failure to comply with any other material term of the Agreement, including the provisions concerning insurance and nondiscrimination.

C. Any change in ownership or control of Contractor without the prior written approval of the Park District, which approval the Park District will not unreasonably withhold.

D. Failure to comply with the provisions in the Agreement requiring compliance with all laws in the performance of the Agreement.

11. Remedies.

The occurrence of any event of default permits the Park District, at the Park District's sole option, to declare Contractor in default. The Park District may in its sole discretion give Contractor an opportunity to cure the default within 30 days. The Park District will give Contractor written notice of the default, after which the Park District may invoke any or all of the following remedies:

A. The right to take over and complete the Services, or any part of them, at Contractor's expense, and bill Contractor for the cost of the Services, and Contractor must pay the difference between the total amount of this bill and the amount the Park District would have paid Contractor under the terms and conditions of the Agreement for the Services that were assumed by the Park District as agent for the Contractor under this section;

B. The right to terminate the Agreement as to any or all of the Services yet to be performed effective at a time specified by the Park District;

C. The right of specific performance, an injunction or any other appropriate equitable remedy;

D. The right to money damages;

E. The right to withhold all or any part of Contractor's compensation under this Agreement.

12. Warranties and Representations.

In connection with signing and carrying out the Agreement, Contractor represents and warrants to the Park District that:

A. Contractor is appropriately licensed under Illinois law to perform the Services required under the Agreement and will perform no Service for which a professional license is required by law and for which Contractor is not appropriately licensed;

B. Contractor is competent to perform the Services and will provide experienced personnel to carry out the Services in a timely fashion;

C. Contractor will comply with all general terms, conditions and specifications as stated in the RFP;

D. Contractor is financially solvent; it and each of its employees, agents and subcontractors of any tier are competent to perform the Services required under the Agreement; and Contractor is legally authorized to execute and perform or cause to be performed the Agreement under the terms and conditions stated in the Agreement;

E. Contractor acknowledges that any certification, affidavit or acknowledgment made

under oath in connection with the Agreement is made under penalty of perjury and, if false, is also cause for termination under the events of default and early termination provisions in the Agreement.

13. **Notices**.

Notices, requests or documents sent pursuant to this Agreement will be sent to the addresses and persons set forth below. All notices, requests or documents are deemed received when (i) delivered personally, (ii) one day after deposit with a commercial express courier specifying next day delivery, with written verification of receipt, or (iii) three days after the date of mailing when sent by registered or certified mail, return receipt requested.

All notices, requests or documents directed to Park District will be sent to it as follows:

Chicago Park District
541 N. Fairbanks Court
Chicago, Illinois 60611
Attention: General Superintendent

With a copy to:

Chicago Park District
541 N. Fairbanks Court
Chicago, Illinois 60611
Attention: General Counsel

All notices, requests or documents directed to Contractor will be sent to it as follows:

Moore Landscapes, Inc.
1869 Techny Road
Northbrook, Illinois 60062
Attention: President

14. **Insurance.**

Contractor is required to procure and maintain insurance in accordance with the specifications set forth in **Exhibit C**, attached hereto and incorporated herein by reference.

15. **Severability**.

In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of any law or by reason of the interpretation placed thereon by any court or any other governmental body, this Agreement shall be construed as not containing such provision and any and all other provisions hereof which otherwise are lawful and valid and shall remain in full force an effect.

16. Disputes.

Except as otherwise provided in the Agreement, Contractor must and the Park District may bring any dispute arising under this Agreement to the General Superintendent of the Park District for decision based upon written submissions of the parties. The General Superintendent of the Park District will reduce his decision to writing and mail or otherwise furnish a copy of it to Contractor. The decision of the General Superintendent of the Park District is final and binding. Contractor must follow the procedures set out in this Section and receive the General Superintendent of the Park District's final decision as a condition precedent to filing an action in the Circuit Court of Cook County or any other court.

17. Governing Law.

This Agreement will be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to the principles of conflicts of law thereof. If there is a lawsuit under this Agreement, each Party hereto agrees to submit to the jurisdiction of the courts of Cook County in the State of Illinois.

18. Indemnification.

Contractor agrees to and does hereby assume all responsibility for and agrees to indemnify, save and hold harmless, and at the Park District's option, defend the Park District, its Commissioners, officers, employees, volunteers, contractors and agents (collectively, the "Indemnitees") against any losses, claims, damages, liabilities, actions, suits, proceedings, costs or expenses that the Indemnitees may suffer, incur or sustain or for which it or they may become liable (including, but not limited to, mechanic's liens, personal or bodily injury to or death of persons, loss or damage to property, or claims for employees, subcontractors, agents or servants of the Contractor) resulting from, arising out of, or relating to any negligence or intentional misconduct in the performance of the Contractor under this Agreement. The obligation to indemnify the Park District shall survive the termination or expiration of this Agreement.

19. Independent Contractor.

The Agreement is not intended to and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, corporation or other formal business association or organization of any kind between Contractor and the Park District. The rights and the obligations of the parties are only those expressly set forth in the Agreement. Contractor must perform under the Agreement as an independent contractor and not as a representative, employee, agent, or partner of the Park District.

20. Compliance with All Laws Generally.

Contractor shall comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders, all as may be in effect from time to time, including the Chicago Park District's Ethics Code, Chapter III of the code of the Chicago Park District, which is hereby incorporated by reference. This Agreement shall not be legally binding on the Park District if

entered into in violation of the provisions of 50 ILCS 105, the Public Officer Prohibited Activities Act.

21. Amendments.

No changes, amendments, modifications, or discharge of the Agreement, or any part of it are valid unless in writing and signed by the authorized agent of Contractor and the Park District or their respective successors and assigns. The Park District incurs no liability for Additional Services without a written amendment to the Agreement under this section.

22. Records and Audits.

A. Records

1) Contractor must deliver or cause to be delivered to the Park District all documents, including all Deliverables prepared for the Park District under the terms of the Agreement, to the Park District promptly in accordance with the time limits prescribed in the Agreement, and if no time limit is specified, then upon reasonable demand for them or upon termination or completion of the Services under the Agreement. In the event of the failure by Contractor to make such delivery upon demand, then and in that event, Contractor must pay to the Park District any damages the Park District may sustain by reason of Contractor's failure.

2) Contractor must maintain any such records including Deliverables not delivered to the Park District or demanded by the Park District for a period of 5 years after the final payment made in connection with the Agreement. Contractor must not dispose of such documents following the expiration of this period without notification of and written approval from the Park District in accordance with the notices provisions in the Agreement.

B. Audits

The Park District reserves the right to conduct an audit, at the Park District's expense, for a period of 2 years after the expiration of the terms of the Agreement. The Contractor shall make all records related to Park District activities available for audit during regular business hours.

23. Assigns.

All of the terms and conditions of the Agreement are binding upon and inure to the benefit of the parties and their respective legal representatives, successors and assigns. Neither Contractor nor the Park District shall assign, sublet, transfer or convey all or any portion of this Agreement without the prior written consent of the other Party.

24. Separate Contracts and Cooperation.

The Park District reserves the right to obtain other contracts, or to employ its own forces to

do the work adjacent to or immediately connected with Services performed under this Agreement.

If the Agreement is terminated for any reason, or if it is to expire on its own terms, Contractor must make every effort to assure an orderly transition to another provider of the Services, if any, orderly demobilization of its own operations in connection with the Services, uninterrupted provision of Services during any transition period and must otherwise comply with the reasonable requests and requirements of the Department in connection with the termination or expiration.

25. Waiver.

The making or failure to make any payment, take any actions or waive any rights shall not be deemed an amendment of this Agreement nor a consent to such action or to any future action or failure to act, unless the Party required to so consent or act expressly agrees in writing. No waiver by any party of any breach of any provision of this Agreement shall be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to, or demand on, any Party in any case shall, of itself, entitle such party to any other or further notice of demand in similar.

26. No Conflicts of Interest.

No member of the governing body of the Chicago Park District (or any person who has served in such capacity during the prior two years), and no other trustee, officer, employee or agent of the Park District shall have any personal, financial or economic interest, direct or indirect, in this Agreement, or any subcontract or the performance of other work resulting therefrom.

27. Non-Liability of Public Officials.

Contractor and any assignee or contractor of Contractor must not charge any official, employee or agent of the Park District personally with any liability or expenses of defense or hold any official, employee or agent of the Park District personally liable to them under any term or provision of the Agreement or because of the Park District's execution, attempted execution or any breach of the Agreement.

28. Confidentiality.

Contractor acknowledges that it is entrusted with or has access to valuable and confidential information and records of the Park District and with respect to that information, Contractor agrees to be held to the standard of care of a fiduciary.

A. All Deliverables and reports, data, findings or information in any form prepared, assembled or encountered by or provided by Contractor under the Agreement are property of the Park District and are confidential, except as specifically authorized in the Agreement or as may be required by law. Contractor must not allow the Deliverables to be made available to any other individual or organization without the prior written consent of the Park District. Further, all documents and other information provided to Contractor by the Park District are confidential and must not be made available to any other individual or organization without

the prior written consent of the Park District. Contractor must implement such measures as may be necessary to ensure that its staff and its subcontractors are bound by the confidentiality provisions in the Agreement.

B. Contractor must not issue any publicity news releases or grant press interviews, and except as may be required by law during or after the performance of the Agreement, disseminate any information regarding its Services or the project to which the Services pertain without the prior written consent of the Park District.

C. If Contractor is presented with a request for documents by any administrative agency or with a subpoena regarding any records, data or documents which may be in Contractor's possession by reason of the Agreement, Contractor must immediately give notice to the Park District with the understanding that the Park District will have the opportunity to contest such process by any means available to it before the records or documents are submitted to a court or other third party. Contractor, however, is not obligated to withhold the delivery beyond the time ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

29. Minority and Women's Business Enterprises Commitment.

In the performance of the Agreement, including the procurement and lease of materials or equipment, Contractor must abide by the minority and women's business enterprise commitment requirements of the Park District as set forth in the Special Conditions, except to the extent waived by the Park District. Contractor's completed Schedules evidencing its compliance with this requirement are a part of the Agreement, in **Exhibit D**, upon acceptance by the Park District.

30. Equal Employment Opportunity.

Contractor shall comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., as amended, and any rules and regulations promulgated in accordance therewith, including, but not limited to, the Equal Employment Opportunity Clause, Illinois Administrative Code, Title 44, Part 750 (Appendix A), which is incorporated herein by reference.

31. Contractor's Employees.

A. The Park District has the right the require the Contractor to remove from their workforce any employees deemed incompetent, careless, or otherwise objectionable, or any personnel whose actions are deemed to be contrary to public interests or inconsistent with the best interests of a facility.

B. Damage and/or pilferage to Park District property and/or its contents by the employees of the Contractor shall be the Contractor's responsibility and losses shall be the liability of the Contractor.

C. Contractor's employees are to be considered the employees of the Contractor and not the Park District and, therefore, Contractor shall comply with all Federal and State tax

requirements and government regulations.

D. Contractor shall not directly or indirectly hire or otherwise engage any full time Park District employee without the prior written consent of an authorized representative of the Park District.

32. Prevailing Wage Rates.

Contractor shall pay all persons employed by Contractor, or its subcontractors, prevailing wages where applicable. As a condition of making payment to the Contractor, the Park District may request the Contractor to submit an affidavit to the effect that not less than the prevailing hourly wage rate is being paid to laborers employed on contracts in accordance with Illinois Law.

33. Failure of Contractor to Pay Subcontractors, Workers and Employees.

Should the Park District have reason to believe that Contractor has neglected or failed to pay any subcontractor, worker or employee for work performed under the Agreement, he may order and direct that no further payment be made to Contractor until the Park District is satisfied that such subcontractors, workers or employees have been fully paid. Contractor shall comply with all Illinois Compiled Statutes relating to wages and hours, and shall pay the salaries of its employees performing work under the Agreement unconditionally and not less than once monthly without deduction or rebate on any account except mandatory payroll deductions permitted by law. Contractor shall pay its subcontractors within a reasonable time period not to exceed thirty days upon satisfactory completion of work and upon receipt by Contractor of payment from the Park District.

When the General Superintendent or his designee notifies Contractor that no further payments will be made until subcontractors, workers and employees have been paid, and the Contractor neglects or refuses to pay such subcontractors, workers and employees within ten days after being given notice, and if the Park District determines that the services have been performed satisfactorily in accordance with the terms of the Agreement, the Park District may apply any money due or that becomes due under the Agreement to the payment of such subcontractors, workers and employees without other or further notice to Contractor. The failure of the Park District, however, to retain and order or direct that no further payment be made shall not affect the liability of the Contractor, or its sureties, to the Park District, or to any such subcontractors, workers or employees upon any bond given in connection with the Agreement.

34. Non-Collusion Affidavit.

Contractor certifies that neither Contractor nor its agents, employees, officers and any subcontractors, has been engaged in or been convicted or collusion activities as defined on the Signature Page, **Exhibit E**, attached and incorporated herein. Such certification is required in accordance with the Illinois Criminal Code.

35. Counterparts.

The Agreement is comprised of several identical counterparts, each to be fully signed by the

parties and each to be considered an original having identical legal effect.

36. Entire Agreement.

The Agreement, including the entire RFP and its exhibits, the Special Conditions, and the exhibits attached to and incorporated in the Agreement, constitute the entire agreement between the parties and no other warranties, inducements, considerations, promises or interpretations are implied or impressed upon the Agreement that are not expressly addressed in the Agreement. If there is a conflict between the language in this Agreement and other language contained in the RFP, then the language in the RFP shall govern.

Contractor acknowledges that Contractor was given ample opportunity and time and was requested by the Park District to review thoroughly all documents forming the Agreement before signing the Agreement in order that it might request inclusion in the Agreement of any statement, representation, promise or provision that it desired or on that it wished to place reliance.

36. Authority.

The persons signing this Agreement certify that they have power and authority to enter into and execute this Agreement.

IN WITNESS WHEREOF, the duly authorized representatives of the parties hereto have executed this Agreement.

Chicago Park District

By: _____
Michael P. Kelly
General Superintendent

Moore Landscapes, Inc.

By: _____

Its: PRESIDENT

ATTEST:

_____
Secretary
Board of Commissioners
Chicago Park District

Chicago park district

DEPARTMENT OF PURCHASING

CONTRACT

WITH

MOORE LANDSCAPES, INC.

FOR

PLANTING & LANDSCAPING SERVICES DISTRICT WIDE

CONTRACT NO. P4100

Bryan Traubert
President, Board of Commissioners

Michael P. Kelly
General Superintendent & CEO

Rafi Sarooshian
Director of Purchasing

FIRST TIME EXTENSION TO TERM AGREEMENT

This first time extension to the Contract Specification P-11049 (this "Extension") is effective as of May 30, 2014, by and between the Chicago Park District (the "Park District"), a body politic and corporate existing under 70 ILCS 1505/0.01 *et seq.*, and Moore Landscapes, Inc. ("Moore"), an Illinois Corporation. Moore and the Park District are collectively referred to as the "Parties."

RECITALS

A. Moore and the Park District are parties to that certain Term Agreement dated May 30, 2012 (the "Agreement"), whereby Moore provides landscape maintenance services, as defined in this Agreement, for South Lake Shore Drive.

B. Request for Proposal P-11049 forms part of the Agreement.

C. The Agreement permits three (3) additional one-year extension options that are in writing and are signed by both Parties.

D. The Parties desire to exercise the first additional extension option of the Agreement as set forth herein.

NOW, THEREFORE, in consideration of the covenants and mutual agreements set forth herein, the Parties hereby exercise the Agreement as follows:

1. The foregoing recitals are true and correct and are hereby incorporated into and shall constitute a part of this Extension. All capitalized terms used herein shall have the meanings ascribed to such terms in the Agreement, unless expressly defined otherwise herein.

2. Notwithstanding anything to the contrary in the Agreement, the following terms are exercised:

   "First Time Extension," and the new end date is May 30, 2015:

3. This Extension shall be governed by and construed in accordance with the laws of the State of Illinois.

4. This Extension may be executed in counterparts (and by different Parties in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract.

5. The Agreement as modified by this Extension constitute the entire contract among the parties relating to the subject matter hereof, supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof, and remains in full force and effect.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have executed this Amendment.

CHICAGO PARK DISTRICT,
an Illinois municipal corporation

By: _____
Michael P. Kelly
General Superintendent and CEO

MOORE LANDSCAPES, INC.,
an Illinois corporation

By: _____
Name: VICTOR MOORE
Its: PRES / CEO

chicago park district

Administration Office
541 North Fairbanks
Chicago, Illinois 60611
t (312) 742-PLAY (7529)
(312) 747-2001 TTY
www.chicagoparkdistrict.com

April 8, 2013

Mr. Victor Moore, President
Moore Landscape Inc.
1869 Techny Road
Northbrook, IL 60062

Re: Notification of 2013 Contract Budget
District-Wide Planting and Landscaping
Specification No. P-11028

Dear Mr. Moore,

The finalized 2013 contract budget for the above-noted contract is $ 2,500,000.00. This is to be considered the not-to-exceed (NTE) contract amount for calendar year 2013.

Please note that this figure may change if additional funding is allocated for special or emergency projects. If this occurs, a notification of revised contract budget will be issued. Under no circumstances may work be performed which will exceed the contract budget noted above without a written notification of revised contract budget.

The following is the budget breakdown for the initial 2-year term of the contract:

Calendar year 2013 NTE budget:	$ 2,500,000.00
Calendar year 2012 NTE budget:	$ 2,662,150.00
Total NTE for initial 2-year contract term:	$ 5,162,150.00

When submitting pay applications for 2013 work, continue pay app numbering from 2012. Also, please note that "original contract amount" on pay app paperwork must equal the initial 2-year contract term total.

Please don't hesitate to contact me if you have any questions or concerns.

Sincerely,

Barbara E. Wood
Deputy Director of Natural Resources

c: E. Alvarado
J. Gallagher
S. Lertpattarapong
R. Sarrafian
A. Schwerner

CHICAGO PARK DISTRICT
come out and play

C187

chicago park district

Administration Office
541 North Fairbanks
Chicago, Illinois 60611
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(312) 747-2001 TTY
www.chicagoparkdistrict.com

December 20, 2012

Mr. Victor Moore, President
Moore Landscape Inc.
1869 Techny Road
Northbrook, IL 60062

Re: Notification of Revised 2012 Contract Budget
District-Wide Planting and Landscaping
Specification No. P-11028

Dear Mr. Moore,

Per the NTP and notice of 2012 contract budget dated May 15, 2012, the original 2012 contract budget and not-to-exceed amount for the above-noted contract was $ 2,500,000.00.

Please be advised that an additional $ 162,150.00 in funding has been identified for this contract; the revised 2012 contract budget is $ 2,662,150.00.

The revised contract budget of $ 2,662,150.00.00 is to be considered the new not-to-exceed contract amount for calendar year 2012. Please note that this figure may change if additional funding is allocated for special or emergency projects. If this occurs, an additional notification of revised contract budget will be issued. Under no circumstances may work be performed which will exceed the contract budget noted above without a written notification of revised contract budget.

You will receive a notification of the contract budget for calendar year 2013 once contract funding for the year has been identified and confirmed, probably in early February.

In the meantime, please don't hesitate to contact me if you have any questions or concerns.

Sincerely,

Barbara E. Wood
Deputy Director of Natural Resources

c: E. Alvarado
J. Gallagher
S. Lertpattarapong
R. Sarrafian
A. Schwerner

CHICAGO PARK DISTRICT
come out and play

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April 22, 2014

Victor Moore
Moore Landscapes, Inc.
1869 Techny Road
Northbrook, Il 60062

RE: P-11028
Planting & Landscaping Services District Wide

Dear Mr. Moore:

The Chicago Park District ("CPD") is requesting an Extension to the above-referenced agreement. Specifically, the CPD is requesting to exercise the first extension option through the attached First Time Extension.

This Extension will become effective once it is signed by both parties. Accordingly, please sign and return it to my attention. Upon receipt of your signed extension, the CPD will sign and return a copy to your attention.

Sincerely,

Ann C. Boger
Advanced Buyer
Department of Purchasing

FIRST TIME EXTENSION TO TERM AGREEMENT

This first time extension to the Contract Specification P-11028 (this "Extension") is effective as of April 13, 2014, by and between the Chicago Park District (the "Park District"), a body politic and corporate existing under 70 ILCS 1505/0.01 *et seq.*, and Moore Landscapes, Inc. ("Moore"), an Illinois Corporation. Moore and the Park District are collectively referred to as the "Parties."

RECITALS

A. Moore and the Park District are parties to that certain Term Agreement dated April 13, 2012 (the "Agreement"), whereby Moore provides various planting and landscaping services as defined in this Agreement.

B. Request for Proposal P-11028 forms part of the Agreement.

C. The Agreement permits three (3) additional one-year extension options that are in writing and are signed by both Parties.

D. The Parties desire to exercise the first additional extension option of the Agreement as set forth herein.

NOW, THEREFORE, in consideration of the covenants and mutual agreements set forth herein, the Parties hereby exercise the Agreement as follows:

1. The foregoing recitals are true and correct and are hereby incorporated into and shall constitute a part of this Extension. All capitalized terms used herein shall have the meanings ascribed to such terms in the Agreement, unless expressly defined otherwise herein.

2. Notwithstanding anything to the contrary in the Agreement, the following terms are exercised:

   "First Time Extension," and the new end date is April 13, 2015:

3. This Extension shall be governed by and construed in accordance with the laws of the State of Illinois.

4. This Extension may be executed in counterparts (and by different Parties in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract.

5. The Agreement as modified by this Extension constitute the entire contract among the parties relating to the subject matter hereof, supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof, and remains in full force and effect.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have executed this Amendment.

CHICAGO PARK DISTRICT,
an Illinois municipal corporation

By: _____
Michael P. Kelly
General Superintendent and CEO

MOORE LANDSCAPES, INC.,
an Illinois corporation

By: _____
Name: VICTOR MOORE
Its: PRES / CEO

PLANTING AND LANDSCAPING DISTRICT WIDE AGREEMENT

This Planting and Landscaping District Wide Agreement ("Agreement") is effective April 13 2012, (the "Effective Date") by and between the Chicago Park District, a municipal corporation existing pursuant to 70 ILCS 1505/0.01 *et seq.* of the Illinois Compiled Statutes, (the "Park District") by and through its General Superintendent (the "General Superintendent"), and Moore Landscapes Inc., an Illinois corporation ("Contractor"). The Park District and Contractor are sometimes referred to as the "Parties."

BACKGROUND

WHEREAS, The Park District requires services planting and landscaping on a Park District wide basis; and

WHEREAS, the Park District issued a Request for Proposal for Planting and Landscaping District Wide (Specification No. P-11028) dated September 26, 2011 (the "RFP"), which is incorporated into and made part of this Agreement by reference; and

WHEREAS, Contractor submitted a proposal in response to the RFP indicating that it has significant specialized knowledge, expertise, and experience in providing landscape maintenance services; and

WHEREAS, on February 8, 2012, Park District Board of Commissioners authorized the General Superintendent or his designee to enter into an Agreement with Contractor for the purpose of providing Park-District-wide planting and landscaping services.

NOW THEREFORE, in consideration of the agreements, covenants, representations, obligations and privileges herein set forth, and intending to be legally bound hereby, the Park District and Contractor agree as follows:

1. Scope of Services

The Park District hereby engages Contractor to provide landscaping services on a district-wide basis and to be prepared to perform planting and related services as set forth herein at any Park District location. In addition the Contractor shall provide all equipment, fuel, labor, supervision, materials, transportation, trucks, vehicles, including any and all services, in accordance with the terms of the specification and scope of work as specified in pages 9 – 14 of the RFP, and RFP EXHIBITS A and B.

Below is a description of Services which is intended to be general in nature and is neither a complete description of Contractor's Services nor a limitation on the Services that Contractor is to provide under this Agreement. The Services to be provided shall include:

A. General planting and associated landscaping services; planting services; turf and athletic field services; tree and woody plant care services; miscellaneous landscape services; landscape materials services; landscape protection and monitoring services; holiday decoration services. This description of Services is intended to be general in nature and is neither a complete description of Contractor's Services nor a limitation on the Services that Contractor is to provide under this Agreement. Additionally, Contractor shall follow project request procedures for standard non-emergency requests and emergency requests.

B. Experience Requirements

All personnel performing Services are to be trained in and familiar with the work. All work requiring special licensing or certification will be performed by personnel with the requisite licensing and/or certification, which shall be current and in good standing

C. Standards for Work

1. The minimum standards for the Services include, but are not limited to:
   a. CPD Standard Specifications, Detail Drawings and specifications included in the RFP (RFP's Exhibit A hereafter referred to as RFP Exhibit A);
   b. Chicago Landscape Ordinance;
   c. All applicable ADA codes;
   d. Chicago Building Code;
   e. Chicago Energy Code; and
   f. Chicago Standard: Building Healthy, Smart and Green.
2. Substitutions or alterations to RFP Exhibit A that result in lower standards are not permitted.
3. In the event of a discrepancy between RFP Exhibit A specifications, the interpretation of the CPD project manager will prevail.
4. Contractor is responsible for ensuring that all Services, including that performed by subcontractors, meets or exceeds RFP Exhibit A and all RFP standards and specifications.
5. Services that are not performed to specific standards will:
   a. Result in cost deductions to the billing associated with the Services, as assessed by the Park District project manager; and

b. Be required to be brought up to meet specified standards, at no additional cost to the Park District, before full payment for Services is authorized.

2. **Standard of Performance**.

A. Contractor shall provide an adequate number of staff of qualified personnel with the necessary management and technical expertise to assure performance of the Services.

B. Contractor must assure that all Services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed, if required by law. Contractor must provide copies of any such licenses. Contractor remains responsible for the professional and technical accuracy of all Services furnished, whether by Contractor or its subcontractors or others on its behalf.

C. Contractor shall plan, schedule and accomplish Services so as to cause minimum interference with Park District operations and programs.

D. Contractor must perform all Services required of it under the Agreement with that degree of skill, care and diligence normally shown by a Contractor performing services of a scope, purpose and magnitude comparable with the nature of the Services to be provided under the Agreement.

E. If Contractor fails to comply with the foregoing standards, Contractor must perform again, at its own expense, all Services required to be re-performed as a direct or indirect result of that failure. Any review, approval, acceptance or payment for any of the Services by the Park District does not relieve Contractor of its responsibility for the professional skill and care and technical accuracy of its Services. This provision in no way limits the Park District's rights against Contractor either under the Agreement, at law or in equity.

3. **Compensation and Payment**.

A. Compensation. Contractor will provide to the Park District the Services as set forth in Section 1, and the Park District shall pay Contractor an amount not to exceed $2,500,000 annually, and not to exceed a total of $5,000,000 for the initial 2-year term of the Agreement.

Contractor will provide to the Park District professional Services and miscellaneous landscape maintenance Services on an as-needed basis and as requested by the Park District, and the Park District shall pay Contractor at the rates specified in Contractor's Revised Cost Proposal Sheets, attached and incorporated herein (**Attachment A**).

B. Payments. Contractor will be paid monthly, beginning thirty (30) days from receipt of invoice. An audit to reconcile the shortage or overpayment will be done at the end of the twelve-month cycle, at which time necessary adjustments will be made for the remaining length of the Agreement. Any additional costs incurred by the Contractor will be paid on a monthly basis as they arise. Subsequent payments will be made in the same manner each month in succession for the remaining term of the Agreement.

C. Invoices. Contractor will be required to submit an itemized original invoice in triplicate on a monthly basis. All invoices must include the specification number, purchase order number, delivery location, description, quantity, unit price, extended price and total. All invoices are to be submitted to the Comptroller's Office, Chicago Park District, 541 N. Fairbanks, 6th Floor, Chicago, Illinois 60611. Invoices submitted without the noted information and documentation will not be paid, and will be returned for correction.

4. **Contract Term.**

The Term of this Agreement begins on _____, 2012 and will remain in effect for a period of two (2) years. This Agreement may be extended, at the sole option of the Park District, for three (3) additional one (1) year extension periods, subject to appropriation..

5. **Deliverables.**

A. In carrying out its Services, Consultant shall provide to the Park District various data associated with the Services, including but not limited to drawings, test results, studies, reports, and evaluations as specified in Section 1 of this Agreement (the "Deliverables").

B. All Deliverables become property of the Park District once accepted and may be used by the Park District for any purposes without any further consent by Consultant, regardless of whether the project for which the Deliverables are made is executed or not. The Park District shall have the right to use such data as the Park District sees fit.

6. **Ownership of Park District Data.**

All data and information provided or submitted to Contractor by the Park District ("Park District Data") and all confidential information are and shall remain the property of the Park District. Contractor and its employees, agents and subcontractors and their employees and agents shall not:

1) use the Park District Data other than in connection with the performance of the Services;

2) disclose, sell, assign, lease or otherwise provide the Park District Data to third parties; or

3) commercially exploit the Park District Data.

7. **Termination for Cause.**

The Park District reserves the right to terminate this Agreement in the event Contractor breaches or violates any term or terms of the Agreement. In the event of such termination for cause, the Park District shall have the option of paying for services performed and accepted by the Park District that are in compliance with the requirements of this Agreement prior to the date of termination.

8. **Termination for Convenience.**

The Park District reserves the right to terminate a contract in whole or part, without showing cause upon giving written notice to the Contractor. The Park District shall only pay for goods delivered and accepted and/or services performed prior to the date of termination at the related contract unit prices. The Contractor will not be reimbursed for any anticipatory profits, which have not been earned up to the date of the termination.

9. **Non-Appropriation.**

If no funds or insufficient funds are appropriated and budgeted in any fiscal period of the Park District for payments to be made under the Agreement, then the Park District will notify Contractor in writing of that occurrence, and the Agreement will terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under the Agreement are exhausted. Payments for Services completed to the date of notification will be made to Contractor. No payments will be made or due to Contractor under this Agreement beyond those amounts appropriated and budgeted by the Park District to fund payments under this Agreement.

10. **Events of Default Defined.**

The following constitute events of default:

A. Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by Contractor to the Park District.

B. Contractor's material failure to perform any of its obligations under the Agreement including the following:

1) Failure due to a reason or circumstances within Contractor's reasonable control to perform the Services with sufficient personnel and equipment or with sufficient material to ensure the performance of the Services;

2) Failure to promptly re-perform within a reasonable time Services that were rejected as erroneous or unsatisfactory;

3) Discontinuance of the Services for reasons within Contractor's reasonable control;

4) Failure to comply with the Park District's terms and conditions as set forth in the RFP;

5) The filing of Contractor of any petition or proceeding under applicable state or federal bankruptcy or solvency law or statute which petition or proceeding has not been dismissed or stayed within thirty (30) days after the date of its filing;

6) The initiation against Contractor by any creditor of an involuntary petition or proceeding under any state or federal bankruptcy or insolvency law or statute, which petition or proceeding is not dismissed within thirty (30) days after the date of filing;

7) The appointment of a receiver for Contractor with respect to all or a portion of its respective assets; or

8) Failure to comply with any other material term of the Agreement, including the provisions concerning insurance and nondiscrimination.

C. Any change in ownership or control of Contractor without the prior written approval of the Park District, which approval the Park District will not unreasonably withhold.

D. Failure to comply with the provisions in the Agreement requiring compliance with all laws in the performance of the Agreement.

11. Remedies.

The occurrence of any event of default permits the Park District, at the Park District's sole option, to declare Contractor in default. The Park District may in its sole discretion give Contractor an opportunity to cure the default within 30 days. The Park District will give Contractor written notice of the default, after which the Park District may invoke any or all of the following remedies:

A. The right to take over and complete the Services, or any part of them, at Contractor's expense, and bill Contractor or the cost of the Services, and Contractor must pay the difference between the total amount of this bill and the amount the Park District would have paid Contractor under the terms and conditions of the Agreement for the Services that were assumed by the Park District as agent for the Contractor under this section;

B. The right to terminate the Agreement as to any or all of the Services yet to be performed effective at a time specified by the Park District;

C. The right of specific performance, an injunction or any other appropriate equitable remedy;

D. The right to money damages;

E. The right to withhold all or any part of Contractor's compensation under this Agreement.

12. **Warranties and Representations.**

In connection with signing and carrying out the Agreement, Contractor represents and warrants to the Park District that:

A. Contractor is appropriately licensed under Illinois law to perform the Services required under the Agreement and will perform no Service for which a professional license is required by law and for which Contractor is not appropriately licensed;

B. Contractor is competent to perform the Services and will provide experienced personnel to carry out the Services in a timely fashion;

C. Contractor will comply with all general terms, conditions and specifications as stated in the Agreement;

D. Any goods and/or services to be delivered hereunder shall be in full conformity with all manufacturer and seller express warranties and that the goods and/or services shall be free from defects in material, workmanship, or performance and shall conform to the specifications, drawings, and/or samples. Contractor agrees that this warranty shall survive inspection, acceptance and payment;

E. No article sold and delivered hereunder shall infringe any trademark, trade name, patent, copyright, or application therefore. In the event that any article sold and delivered hereunder shall be covered by any trademark, trade name, patent, copyright, or application therefore, Contractor shall indemnify and save harmless the Park District, its Commissioners, officers, employees and agents from any and all loss, cost, or expense on account of any and all claims, suits or judgments on account of the use or sale of such article in violation of rights under such trademark, trade name, patent, copyright, or application;

F. That any goods to be delivered hereunder shall be manufactured, sold and installed in compliance with the provisions of all applicable federal, state, and local laws and regulations;

G. That any goods to be delivered hereunder shall be free and clear of all liens, claims or encumbrances of any kind;

H. That nothing contained herein shall exclude or affect the operation of any implied warranties otherwise arising in favor of the Park District;

I. Contractor is financially solvent; it and each of its employees, agents and subcontractors of any tier are competent to perform the Services required under the Agreement; and Contractor is legally authorized to execute and perform or cause to be performed the Agreement under the terms and conditions stated in the Agreement;

J. Contractor acknowledges that any certification, affidavit or acknowledgment made under oath in connection with the Agreement is made under penalty of perjury and, if false, is also cause for termination under the events of default and early termination provisions in the Agreement.

K. Contractor warrants that it will require each Subcontractor to comply with all applicable provisions of this Agreement but will not make this entire Agreement part of any subcontract. Contractor must incorporate all the provisions of this Agreement into each agreement with a Subcontractor and require the same to be incorporated into all agreements with Subcontractors.

13. **Notices**.

Notices, requests or documents sent pursuant to this Agreement will be sent to the addresses and persons set forth below. All notices, requests or documents are deemed received when delivered (i) personally, (ii) one day after deposit with a commercial express courier specifying next day delivery, with written verification of receipt, or (iii) three days after the date of mailing when sent by registered or certified mail, return receipt requested.

All notices, requests or documents directed to Park District will be sent to it as follows:

Chicago Park District
541 N. Fairbanks Court
Chicago, Illinois 60611
Attention: Director Of Purchasing

With copies to:

Chicago Park District
541 N. Fairbanks Court
Chicago, Illinois 60611
Attention: General Counsel

All notices, requests or documents directed to Contractor will be sent to it as follows:

Moore Landscapes Inc.

1869 Techny Road
Northbrook, IL 60062
Attention: President

14. **Insurance.**

Contractor is required to procure and maintain insurance in accordance with the specifications set forth in **Attachment B**, attached hereto and incorporated herein by reference.

15. **Severability.**

In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of any law or by reason of the interpretation placed thereon by any court or any other governmental body, this Agreement shall be construed as not containing such provision and any and all other provisions hereof which otherwise are lawful and valid and shall remain in full force an effect.

16. **Disputes.**

Except as otherwise provided in the Agreement, Contractor must and the Park District may bring any dispute arising under this Agreement to the General Superintendent of the Park District for decision based upon written submissions of the parties. The General Superintendent of the Park District will reduce his decision to writing and mail or otherwise furnish a copy of it to Contractor. The decision of the General Superintendent of the Park District is final and binding. Contractor must follow the procedures set out in this Section and receive the General Superintendent of the Park District's final decision as a condition precedent to filing an action in the Circuit Court of Cook County or any other court.

17. **Governing Law.**

This Agreement will be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to the principles of conflicts of law thereof. If there is a lawsuit under this Agreement, each Party hereto agrees to submit to the jurisdiction of the courts of Cook County in the State of Illinois.

18. **Indemnification.**

Contractor must defend, indemnify, keep and hold harmless the Park District, its Commissioners, officers, representatives, agents, volunteers and employees, from and against any and all lawsuits, claims, demands, liabilities, losses and expenses, including court costs and attorneys' fees, for or on account of any injury to any person or any death at any time resulting from such injury, or any damage to property which may arise or which may be alleged to have arisen out of, or in connection with the work, goods and/or services covered by this Agreement. The

obligation to indemnify the Park District shall survive the termination or expiration of this Agreement.

19. **Independent Contractor.**

The Agreement is not intended to and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, corporation or other formal business association or organization of any kind between Contractor and the Park District. The rights and the obligations of the parties are only those expressly set forth in the Agreement. Contractor must perform under the Agreement as an independent contractor and not as a representative, employee, agent, or partner of the Park District.

20. **Compliance with All Laws Generally.**

Contractor shall comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders, all as may be in effect from time to time, including the Chicago Park District's Ethics Code, Chapter III of the code of the Chicago Park District, which is hereby incorporated by reference. This Agreement shall not be legally binding on the Park District if entered into in violation of the provisions of 50 ILCS 105, the Public Officer Prohibited Activities Act.

21. **Modifications, Substitutions and Amendments.**

The Park District may from time to time request changes in the Scope of Services to be performed under this Agreement, or it may become necessary to substitute one item for another. Such changes, including any increase or decrease in the amount of Contractor's compensation, which are mutually agreed upon by and between the Park District and Contractor, shall be incorporated in written amendments to the Agreement. No changes, amendments, modifications, substitutions, cancellation or discharge of the proposed Agreement, or any part hereof, shall be valid unless in writing and signed by the Parties hereto, or their respective successors.

22. **Assigns.**

All of the terms and conditions of the Agreement are binding upon and inure to the benefit of the parties and their respective legal representatives, successors and assigns. Neither Contractor nor the Park District shall assign, sublet, transfer or convey all or any portion of this Agreement without the prior written consent of the other Party.

23. **Separate Contracts and Cooperation.**

The Park District reserves the right to obtain other contracts, or to employ its own forces to do the work adjacent to or immediately connected with Services performed under this Agreement.

If the Agreement is terminated for any reason, or if it is to expire on its own terms, Contractor must make every effort to assure an orderly transition to another provider of the Services, if any, orderly demobilization of its own operations in connection with the Services, uninterrupted provision of Services during any transition period, and must otherwise comply with the reasonable requests and requirements of the Park District in connection with the termination or expiration.

24. **Failure of Contractor to Pay Subcontractors, Workers and Employees.**

Should the Park District's Director of Purchasing have reason to believe that Contractor has neglected or failed to pay any subcontractor, worker, or employee for work performed under the Agreement, he may order and direct that no further payment be made to Contractor until the Director of Purchasing is satisfied that such subcontractors, workers, or employees have been fully paid. Contractor shall comply with all Illinois Compiled Statutes relating to wages and hours, and shall pay the salaries of its employees performing work under the Agreement unconditionally and not less than once monthly without deduction or rebate on any account except mandatory payroll deductions permitted by law. Contractor shall pay its subcontractors within a reasonable time period not to exceed thirty days upon satisfactory completion of work and upon receipt by Contractor of payment from the Park District.

When the General Superintendent or his designee notifies Contractor that no further payments will be made until subcontractors, workers, and employees have been paid, and the Contractor neglects or refuses to pay such subcontractors, workers and employees within ten days after being given notice, and if the Park District determines that the services have been performed satisfactorily in accordance with the terms of the Agreement, the Park District may apply any money due or that becomes due under the Agreement to the payment of such subcontractors, workers and employees without other or further notice to Contractor. The failure of the Park District, however, to retain and order or direct that no further payment be made shall not affect the liability of the Contractor, or its sureties, to the Park District, or to any such subcontractors, workers or employees upon any bond given in connection with the Agreement.

25. **Waiver.**

The making or failure to make any payment, take any actions, or waive any rights shall not be deemed an amendment of this Agreement nor a consent to such action or to any future action or failure to act, unless the Party required to so consent or act expressly agrees in writing. No waiver by any party of any breach of any provision of this Agreement shall be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to, or demand on, any Party in any case shall, of itself, entitle such party to any other or further notice of demand in similar.

26. **No Conflicts of Interest.**

No member of the governing body of the Chicago Park District (or any person who has served in such capacity during the prior two years), and no other trustee, officer, employee or agent of the Park District shall have any personal, financial or economic interest, direct or indirect, in this Agreement, or any subcontract or the performance of other work resulting therefrom.

27. **Non-Liability of Public Officials.**

Contractor and any assignee or contractor of Contractor must not charge any official, employee, or agent of the Park District personally with any liability or expenses of defense or hold any official, employee, or agent of the Park District personally liable to them under any term or provision of the Agreement or because of the Park District's execution, attempted execution, or any breach of the Agreement.

28. **Confidentiality.**

Contractor acknowledges that it is entrusted with or has access to valuable and confidential information and records of the Park District and with respect to that information, Contractor agrees to be held to the standard of care of a fiduciary.

If Contractor is presented with a request for documents by any administrative agency or with a subpoena regarding any records, data, or documents which may be in Contractor's possession by reason of the Agreement, Contractor must immediately give notice to the Park District with the understanding that the Park District will have the opportunity to contest such process by any means available to it before the records or documents are submitted to a court or other third party. Contractor, however, is not obligated to withhold the delivery beyond the time ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

29. **Minority and Women's Business Enterprises Commitment.**

In the performance of the Agreement, including the procurement and lease of materials or equipment, Contractor must abide by the minority and women's business enterprise commitment requirements of the Park District as set forth in the MBE/WBE Schedules, attached and incorporated herein as **Attachment C**, except to the extent waived by the Park District.

30. **Equal Employment Opportunity.**

Contractor shall comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., as amended, and any rules and regulations promulgated in accordance therewith, including, but not limited to, the Equal Employment Opportunity Clause, Illinois Administrative Code, Title 44, Part 750 (Appendix A), which is incorporated herein by reference.

31. **Contractor's Employees.**

A. The Park District has the right the require the Contractor to remove from their workforce any employees deemed incompetent, careless, or otherwise objectionable, or any personnel whose actions are deemed to be contrary to public interests or inconsistent with the best interests of the Park District's program.

B. Damage and/or pilferage to Park District property and/or its contents by the employees of the Contractor shall be the Contractor's responsibility and losses shall be the liability of the Contractor.

C. Contractor's employees are to be considered the employees of the Contractor and not the Park District and, therefore, Contractor shall comply with all Federal and State tax requirements and government regulations.

D. Contractor shall not directly or indirectly hire or otherwise engage any full time Park District employee without the prior written consent of an authorized representative of the Park District.

32. **Prevailing Wage Rates.**

Contractor shall pay all persons employed by Contractor, or its subcontractors, prevailing wages where applicable. As a condition of making payment to the Contractor, the Park District may request the Contractor to submit an affidavit to the effect that not less than the prevailing hourly wage rate is being paid to laborers employed on contracts in accordance with Illinois Law.

33. **Non-Collusion Affidavit.**

Contractor certifies that neither Contractor nor its agents, employees, officers, and any subcontractors, has been engaged in or been convicted or collusion activities as defined on the Signature Page, **Attachment D**, attached and incorporated herein. Such certification is required in accordance with the Illinois Criminal Code.

34. **Counterparts.**

The Agreement is comprised of several identical counterparts, each to be fully signed by the parties and each to be considered an original having identical legal effect.

35. **Change of Address or Business Information.**

The Park District's Director of Purchasing must be notified immediately of any change of address of Contractor, or any change in ownership, or of any change in Contractor's business organization as described in the submitted Economic Disclosure Statement (EDS).

36. **Entire Agreement.**

The Agreement and its Attachments, including the entire RFP and the General and Special Conditions stated therein, and the Exhibits attached to it and incorporated in it, and Addendum No. 1, constitute the entire agreement between the parties and no other warranties, inducements, considerations, promises or interpretations are implied or impressed upon the Agreement that are not expressly addressed in the Agreement. If there is a conflict between the language in this Agreement and other language contained in the RFP, then the language in this Agreement shall govern.

Contractor acknowledges that Contractor was given ample opportunity and time and was requested by the Park District to review thoroughly all documents forming the Agreement before signing the Agreement in order that it might request inclusion in the Agreement of any statement, representation, promise or provision that it desired or on that it wished to place reliance.

37. **Authority.**

The persons signing this Agreement certify that they have power and authority to enter into and execute this Agreement.

REMAINDER INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the duly authorized representatives of the parties hereto have executed this Agreement.

Chicago Park District

By: _____
Michael P. Kelly
General Superintendent & CEO

Moore Landscapes, Inc.

By: _____

Its: PRESIDENT / CEO

ATTEST:

_____
Secretary
Board of Commissioners
Chicago Park District

DISTRICTWIDE PLANTING, LANDSCAPING, TURF AND ATHLETIC FIELD SERVICES AGREEMENT

This Districtwide Planting, Landscaping, Turf and Athletic Field Services Agreement ("Agreement") is effective February 21 2018, (the "Effective Date") by and between the Chicago Park District, a municipal corporation existing pursuant to 70 ILCS 1505/0.01 *et seq.* of the Illinois Compiled Statutes, (the "Park District") by and through its General Superintendent (the "General Superintendent"), and Moore Landscapes LLC, an Illinois limited liability company ("Contractor"). The Park District and Contractor are sometimes referred to as the "Parties".

BACKGROUND

WHEREAS, The Park District requires services for planting and landscaping district wide, as well as athletic field services; and

WHEREAS, the Park District issued a Request for Proposal for District Wide Planting & Landscaping Services and District Wide Turf & Athletic Field Services (Specification No. P-17022) dated September 26, 2017 (the "RFP"), which is incorporated into and made part of this Agreement by reference; and

WHEREAS, Contractor submitted a proposal in response to the RFP indicating that it has significant specialized knowledge, expertise, and experience in providing planting and landscaping services and athletic field services; and

WHEREAS, on December 13, 2017, Park District Board of Commissioners authorized the General Superintendent or his designee to enter into an Agreement with Contractor for the purpose of planting and landscaping services and athletic field services, all of which are district wide.

NOW THEREFORE, in consideration of the agreements, covenants, representations, obligations and privileges herein set forth, and intending to be legally bound hereby, the Park District and Contractor agree as follows:

1. Scope of Services

The Park District hereby engages Contractor to provide planting, landscape, turf and athletic field services as set forth herein. Contractor will be responsible for the planting and associated landscaping services and turf and athletic field services in any park or location within the District (the "Services") Contractor shall provide all equipment, materials (expendable and otherwise), tools, labor, services, supervision, transportation, vehicles, and fuel necessary to carry out the Services. This description of Services is intended to be general in nature and is neither a complete description of Contractor's Services nor a limitation on the Services that Contractor is to provide under this Agreement.

The Scope of Services that Contractor will provide under this Agreement is as follows:

A. Areas of Work

Contractor may be required to perform Services at any park, or in any location of any park within the Chicago Park District.

B. Personnel Qualifications

1) General

a. All personnel performing Services must be fully trained and experienced with the type of Services being performed.

b. Contractor must ensure that Services requiring special licensing or certification will be performed only by personnel with the requisite licensing and/or certification, which shall be current and in good standing.

c. Personnel qualifications set forth in the RFP will be applied at all times to all Contractor and subcontractor personnel performing the Services.

2) Personnel

a. Supervisory personnel, including project managers, crew crew supervisors and crew leaders

i. All supervisory personnel are to be familiar with and fully understand all specifications and requirements for all Services to be performed

ii. Supervisory personnel applying chemicals with spraying equipment or supervising workers performing this work must have a current Commercial Applicator license as required by the Illinois Department of Agriculture.

b. Crew personnel

i. Crew personnel performing Services are to be trained in and familiar with the type of work being performed. Untrained workers, including unskilled "day laborers" will not be acceptable.

ii. Crew personnel applying chemicals with spraying equipment must have a Commercial Applicator license as required by the Illinois Department of Agriculture.

C. Other Contracts

The Park District has other contracts for services similar to those discussed in this Scope of Services and reserves the right to use those contracts for the performance of some or all of the Services. Additionally, the Park District has in-house personnel capable of providing services similar to those discussed in this Scope of Services and reserves the right to use those in-house personnel for the performance of some or all of the Services.

D. Standards of Work

1) The minimum standards for the Services include, but are not limited to:

a. All requirements set forth in the RFP;

b. CPD Standard Specifications, Detail Drawings and technical specifications included in EXHIBIT B of the RFP

c. Chicago Landscape Ordinance;

d. All applicable ADA codes;

e. Chicago Building Code;

f. Chicago Energy Code; and

g. Chicago Standard: Building Healthy, Smart and Green.

2) Contractor is responsible for ensuring that all Services, including those performed by subcontractors, meets or exceeds the standards and specifications of the RFP. The above standards and specifications are to be applied to all Services at all times. In the event of a discrepancy between specifications, the interpretation of the Park District project manager will prevail. Substitutions for or alterations to the specifications that result in lower standards will not be permitted without the prior approval of the Park District.

3) Any Services that are not performed to these standards, as determined by the Park District, will result in the assessment of cost deductions, by the Park District, to the billing associated with the work. Furthermore, the deficient work will be required to be brought up to the

specified standards, at no additional cost to the Park District, before full payment for Services is authorized.

E. Category I – Planting and Landscaping Services

General

1) Contractor shall provide the following planting and associated landscaping Services:

a. Woody plant material;
b. Herbaceous plant material;
c. Tree and woody plant care;
d. Miscellaneous landscape Services;
e. Landscape materials services; and
f. Professional Services.

2) All Services are considered performance based; the intended result of all planting work performed through this Agreement is the successful establishment of plantings as characterized by healthy, vigorous, thriving plant material.

Project Work

3) Woody plant material Services include, but may not be limited to:

a. Furnish, install and maintain woody plant material;
b. Install and maintain woody plant material;
c. Transplant, transport, install and maintain woody plant material;
d. Furnish and deliver woody plant material; and
e. GPS tree layout and documentation services.

4) Herbaceous plant material Services include, but may not be limited to:

a. Furnish, install and maintain herbaceous plant material;
b. Install and maintain herbaceous plant material;
c. Transplant, transport, install and maintain herbaceous plant material; and
d. Furnish and deliver herbaceous plant material.

5) Tree and woody plant care Services include, but may not be limited to:

a. Dutch Elm Disease (DED) control services;

b. Pruning of trees and shrubs;
c. Removal of trees and shrubs; and
d. Miscellaneous tree and woody plant care services.

6) Miscellaneous landscape Services include, but may not be limited to:

a. Site preparation and maintenance Services;
b. General landscape turf Services; and
c. General landscape labor Services.

7) Landscape materials Services include, but may not be limited to:

a. Furnish and install landscape materials;
b. Furnish and deliver landscape materials;
c. Furnish, install and maintain temporary landscape protection fence systems;
d. Furnish and deliver temporary landscape protection fence materials;
e. Furnish, install and maintain landscape paving and surfacing; and
f. Furnish and deliver temporary landscape paving and surfacing materials.

8) Professional Services

a. Design Services;
b. Soil Testing; and
c. GPS inventory Services;

F. Category II – Turf and Athletic Field Services

General

1) Contractor will provide the following turf and athletic field Services:

a. Turf installation and maintenance Services;
b. Athletic Field restoration and renovation Services;

2) All Services are considered performance based; the intended result of all turf Services performed through this Agreement is the successful establishment of turfgrass as characterized by healthy, vigorous, thriving turf.

Project Work

1) Turf installation and maintenance Services include, but may not be limited to:

a. Furnish, install, establish and maintain turf seed and/or sod;
b. Turf repair;
c. Turf maintenance;
d. Weed, pest and/or disease control; and
e. Testing and problem diagnostic Services.

2) Athletic field restoration and renovation Services include, but may not be limited to:

a. Turf athletic field restoration and renovation;
b. Baseball, softball and combination ballfield infield restoration and/or renovation;
c. Installation of new turf-based athletic fields; and
d. Closure (removal) of existing athletic fields.

G. Detailed Scope of Services

For detailed scopes of work regarding the Services performed under this Agreement, Contractor will refer to Exhibit B of the RFP, "Project Specifications", which includes definitions, detailed descriptions, specifications and required standards.

2. Standard of Performance.

A. Contractor shall provide an adequate number of staff of qualified personnel with the necessary management and technical expertise to assure performance of the Services.

B. Contractor must assure that all Services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed, if required by law. Contractor must provide copies of any such licenses. Contractor remains responsible for the professional and technical accuracy of all Services furnished, whether by Contractor or its subcontractors or others on its behalf.

C. Contractor shall plan, schedule and accomplish Services so as to cause minimum interference with Park District operations and programs.

D. Contractor must perform all Services required of it under the Agreement with that degree of skill, care and diligence normally shown by a Contractor

performing services of a scope, purpose and magnitude comparable with the nature of the Services to be provided under the Agreement.

E. If Contractor fails to comply with the foregoing standards, Contractor must perform again, at its own expense, all Services required to be re-performed as a direct or indirect result of that failure. Any review, approval, acceptance or payment for any of the Services by the Park District does not relieve Contractor of its responsibility for the professional skill and care and technical accuracy of its Services. This provision in no way limits the Park District's rights against Contractor either under the Agreement, at law or in equity.

3. Compensation and Payment.

A. Compensation. Contractor will provide to the Park District planting landscaping Services and districtwide turf and athletic field Services as set forth in Section 1, and the Park District shall pay Contractor an amount not to exceed $3,000,000 annually, and not to exceed a total of $6,000,000 for the initial 2-year term of the Agreement.

Contractor will provide to the Park District miscellaneous landscape Services on an as-needed basis and as requested by the Park District, and the Park District shall pay Contractor at the rates specified in Contractor's Cost Proposal Sheet, **Exhibit A**, attached and incorporated herein.

The amount expended annually for miscellaneous landscape Services will depend upon requirements and if requested will be in addition to the amount for Services specified in Section 1 of this Agreement.

B. Payments. Contractor will be paid monthly, beginning thirty (30) days from receipt of invoice. An audit to reconcile the shortage or overpayment will be done at the end of the twelve-month cycle, at which time necessary adjustments will be made for the remaining length of the Agreement. Any additional costs incurred by the Contractor will be paid on a monthly basis as they arise. Subsequent payments will be made in the same manner each month in succession for the remaining term of the Agreement.

C. Invoices. Contractor will be required to submit an itemized original invoice in triplicate on a monthly basis. All invoices must include the specification number, purchase order number, delivery location, description, quantity, unit price, extended price and total. All invoices are to be submitted to the Comptroller's Office, Chicago Park District, 541 N. Fairbanks, 6th Floor, Chicago, Illinois 60611. Invoices submitted without the noted information and documentation will not be paid, and will be returned for correction.

4. Contract Term.

The Term of this Agreement begins on February 21, 2018 and will remain in effect for a period of two (2) years. This Agreement may be extended, at the sole option of the Park District, for three (3) additional one (1) year extension periods, subject to appropriation.

5. **Deliverables.**

A. In carrying out its Services, Contractor shall provide to the Park District various data associated with the Services, including but not limited to records, reports, documents and evaluations as specified in Section 1 and of this Agreement and the RFP (the "Deliverables").

B. All Deliverables become property of the Park District once accepted and may be used by the Park District for any purposes without any further consent by Contractor, regardless of whether the project for which the Deliverables are made is executed or not. The Park District shall have the right to use such data as the Park District sees fit.

6. **Ownership of Park District Data.**

All data and information provided or submitted to Contractor by the Park District ("Park District Data") and all confidential information are and shall remain the property of the Park District. Contractor and its employees, agents and subcontractors and their employees and agents shall not:

1) use the Park District Data other than in connection with the performance of the Services;
2) disclose, sell, assign, lease or otherwise provide the Park District Data to third parties; or
3) commercially exploit the Park District Data.

7. **Termination for Cause.**

The Park District reserves the right to terminate this Agreement in the event Contractor breaches or violates any term or terms of the Agreement. In the event of such termination for cause, the Park District shall have the option of paying for services performed and accepted by the Park District that are in compliance with the requirements of this Agreement prior to the date of termination.

8. **Termination for Convenience.**

The Park District reserves the right to terminate a contract in whole or part, without showing cause upon giving written notice to the Contractor. The Park District shall only pay for goods delivered and accepted and/or services performed prior to the date of termination at the related contract unit prices. The Contractor will not be reimbursed for any anticipatory profits, which have not been earned up to the date of the termination.

9. Non-Appropriation.

If no funds or insufficient funds are appropriated and budgeted in any fiscal period of the Park District for payments to be made under the Agreement, then the Park District will notify Contractor in writing of that occurrence, and the Agreement will terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under the Agreement are exhausted. Payments for Services completed to the date of notification will be made to Contractor. No payments will be made or due to Contractor under this Agreement beyond those amounts appropriated and budgeted by the Park District to fund payments under this Agreement.

10. Events of Default Defined.

The following constitute events of default:

A. Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by Contractor to the Park District.

B. Contractor's material failure to perform any of its obligations under the Agreement including the following:

1) Failure due to a reason or circumstances within Contractor's reasonable control to perform the Services with sufficient personnel and equipment or with sufficient material to ensure the performance of the Services;

2) Failure to promptly re-perform within a reasonable time Services that were rejected as erroneous or unsatisfactory;

3) Discontinuance of the Services for reasons within Contractor's reasonable control;

4) Failure to comply with the Park District's terms and conditions as set forth in the RFP;

5) The filing of Contractor of any petition or proceeding under applicable state or federal bankruptcy or solvency law or statute which petition or proceeding has not been dismissed or stayed within thirty (30) days after the date of its filing;

6) The initiation against Contractor by any creditor of an involuntary petition or proceeding under any state or federal bankruptcy or insolvency law or statute, which petition or proceeding is not dismissed within thirty (30) days after the date of filing;

7) The appointment of a receiver for Contractor with respect to all or a portion of its respective assets; or

8) Failure to comply with any other material term of the Agreement, including the provisions concerning insurance and nondiscrimination.

C. Any change in ownership or control of Contractor without the prior written approval of the Park District, which approval the Park District will not unreasonably withhold.

D. Failure to comply with the provisions in the Agreement requiring compliance with all laws in the performance of the Agreement.

11. Remedies.

The occurrence of any event of default permits the Park District, at the Park District's sole option, to declare Contractor in default. The Park District may in its sole discretion give Contractor an opportunity to cure the default within 30 days. The Park District will give Contractor written notice of the default, after which the Park District may invoke any or all of the following remedies:

A. The right to take over and complete the Services, or any part of them, at Contractor's expense, and bill Contractor or the cost of the Services, and Contractor must pay the difference between the total amount of this bill and the amount the Park District would have paid Contractor under the terms and conditions of the Agreement for the Services that were assumed by the Park District as agent for the Contractor under this section;

B. The right to terminate the Agreement as to any or all of the Services yet to be performed effective at a time specified by the Park District;

C. The right of specific performance, an injunction or any other appropriate equitable remedy;

D. The right to money damages;

E. The right to withhold all or any part of Contractor's compensation under this Agreement.

12. Warranties and Representations.

In connection with signing and carrying out the Agreement, Contractor represents and warrants to the Park District that:

A. Contractor is appropriately licensed under Illinois law to perform the Services required under the Agreement and will perform no Service for which a professional license is required by law and for which Contractor is not appropriately licensed;

B. Contractor is competent to perform the Services and will provide experienced personnel to carry out the Services in a timely fashion;

C. Contractor will comply with all general terms, conditions and specifications as stated in the Agreement;

D. Any goods and/or services to be delivered hereunder shall be in full conformity with all manufacturer and seller express warranties and that the goods and/or services shall be free from defects in material, workmanship, or performance and shall conform to the specifications, drawings, and/or samples. Contractor agrees that this warranty shall survive inspection, acceptance and payment;

E. No article sold and delivered hereunder shall infringe any trademark, trade name, patent, copyright, or application therefore. In the event that any article sold and delivered hereunder shall be covered by any trademark, trade name, patent, copyright, or application therefore, Contractor shall indemnify and save harmless the Park District, its Commissioners, officers, employees and agents from any and all loss, cost, or expense on account of any and all claims, suits or judgments on account of the use or sale of such article in violation of rights under such trademark, trade name, patent, copyright, or application;

F. That any goods to be delivered hereunder shall be manufactured, sold and installed in compliance with the provisions of all applicable federal, state, and local laws and regulations;

G. That any goods to be delivered hereunder shall be free and clear of all liens, claims or encumbrances of any kind;

H. That nothing contained herein shall exclude or affect the operation of any implied warranties otherwise arising in favor of the Park District;

I. Contractor is financially solvent; it and each of its employees, agents and subcontractors of any tier are competent to perform the Services required under the Agreement; and Contractor is legally authorized to execute and perform or cause to be performed the Agreement under the terms and conditions stated in the Agreement;

J. Contractor acknowledges that any certification, affidavit or acknowledgment made under oath in connection with the Agreement is made

under penalty of perjury and, if false, is also cause for termination under the events of default and early termination provisions in the Agreement.

13. **Notices.**

Notices, requests or documents sent pursuant to this Agreement will be sent to the addresses and persons set forth below. All notices, requests or documents are deemed received when (i) delivered personally, (ii) one day after deposit with a commercial express courier specifying next day delivery, with written verification of receipt, or (iii) three days after the date of mailing when sent by registered or certified mail, return receipt requested.

All notices, requests or documents directed to Park District will be sent to it as follows:

Chicago Park District
541 N. Fairbanks Court
Chicago, Illinois 60611
Attention: General Superintendent

With copies to:

Chicago Park District
541 N. Fairbanks Court
Chicago, Illinois 60611
Attention: General Counsel

All notices, requests or documents directed to Contractor will be sent to it as follows:

Moore Landscapes LLC
1869 Techny Road
Northbrook, Illinois 60062
Attention: President

14. **Insurance.**

Contractor is required to procure and maintain insurance in accordance with the specifications set forth in **Exhibit B**, attached hereto and incorporated herein by reference.

15. **Severability.**

In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of any law or by reason of the interpretation placed thereon by any court or any other governmental body, this Agreement shall be construed as not

containing such provision and any and all other provisions hereof which otherwise are lawful and valid and shall remain in full force an effect.

16. Disputes.

Except as otherwise provided in the Agreement, Contractor must and the Park District may bring any dispute arising under this Agreement to the General Superintendent of the Park District for decision based upon written submissions of the parties. The General Superintendent of the Park District will reduce his decision to writing and mail or otherwise furnish a copy of it to Contractor. The decision of the General Superintendent of the Park District is final and binding. Contractor must follow the procedures set out in this Section and receive the General Superintendent of the Park District's final decision as a condition precedent to filing an action in the Circuit Court of Cook County or any other court.

17. Governing Law.

This Agreement will be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to the principles of conflicts of law thereof. If there is a lawsuit under this Agreement, each Party hereto agrees to submit to the jurisdiction of the courts of Cook County in the State of Illinois.

18. Indemnification.

Contractor must defend, indemnify, keep and hold harmless the Park District, its Commissioners, officers, representatives, agents, volunteers and employees, from and against any and all lawsuits, claims, demands, liabilities, losses and expenses, including court costs and attorneys' fees, for or on account of any injury to any person or any death at any time resulting from such injury, or any damage to property which may arise or which may be alleged to have arisen out of, or in connection with the work, goods and/or services covered by this Agreement. The obligation to indemnify the Park District shall survive the termination or expiration of this Agreement.

19. Independent Contractor.

The Agreement is not intended to and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, corporation or other formal business association or organization of any kind between Contractor and the Park District. The rights and the obligations of the parties are only those expressly set forth in the Agreement. Contractor must perform under the Agreement as an independent contractor and not as a representative, employee, agent, or partner of the Park District.

20. Compliance with All Laws Generally.

Contractor shall comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders, all as may be in effect from

time to time, including the Chicago Park District's Ethics Code, Chapter III of the code of the Chicago Park District, which is hereby incorporated by reference. This Agreement shall not be legally binding on the Park District if entered into in violation of the provisions of 50 ILCS 105, the Public Officer Prohibited Activities Act.

21. Modifications, Substitutions and Amendments.

The Park District may from time to time request changes in the Scope of Services to be performed under this Agreement, or it may become necessary to substitute one item for another. Such changes, including any increase or decrease in the amount of Contractor's compensation, which are mutually agreed upon by and between the Park District and Contractor, shall be incorporated in written amendments to the Agreement. No changes, amendments, modifications, substitutions, cancellation or discharge of the proposed Agreement, or any part hereof, shall be valid unless in writing and signed by the Parties hereto, or their respective successors.

22. Assigns.

All of the terms and conditions of the Agreement are binding upon and inure to the benefit of the parties and their respective legal representatives, successors and assigns. Neither Contractor nor the Park District shall assign, sublet, transfer or convey all or any portion of this Agreement without the prior written consent of the other Party.

23. Separate Contracts and Cooperation.

The Park District reserves the right to obtain other contracts, or to employ its own forces to do the work adjacent to or immediately connected with Services performed under this Agreement.

If the Agreement is terminated for any reason, or if it is to expire on its own terms, Contractor must make every effort to assure an orderly transition to another provider of the Services, if any, orderly demobilization of its own operations in connection with the Services, uninterrupted provision of Services during any transition period and must otherwise comply with the reasonable requests and requirements of the Park District in connection with the termination or expiration.

24. Failure of Contractor to Pay Subcontractors, Workers and Employees.

Should the Park District's Director of Purchasing have reason to believe that Contractor has neglected or failed to pay any subcontractor, worker or employee for work performed under the Agreement, he may order and direct that no further payment be made to Contractor until the Director of Purchasing is satisfied that such subcontractors, workers or employees have been fully paid. Contractor shall comply with all Illinois Compiled Statutes relating to wages and hours, and shall pay the salaries of its employees performing work under the Agreement unconditionally and not less than once monthly without deduction or rebate on any account except mandatory payroll deductions

permitted by law. Contractor shall pay its subcontractors within a reasonable time period not to exceed thirty days upon satisfactory completion of work and upon receipt by Contractor of payment from the Park District.

When the General Superintendent or his designee notifies Contractor that no further payments will be made until subcontractors, workers and employees have been paid, and the Contractor neglects or refuses to pay such subcontractors, workers and employees within ten days after being given notice, and if the Park District determines that the services have been performed satisfactorily in accordance with the terms of the Agreement, the Park District may apply any money due or that becomes due under the Agreement to the payment of such subcontractors, workers and employees without other or further notice to Contractor. The failure of the Park District, however, to retain and order or direct that no further payment be made shall not affect the liability of the Contractor, or its sureties, to the Park District, or to any such subcontractors, workers or employees upon any bond given in connection with the Agreement.

25. Waiver.

The making or failure to make any payment, take any actions or waive any rights shall not be deemed an amendment of this Agreement nor a consent to such action or to any future action or failure to act, unless the Party required to so consent or act expressly agrees in writing. No waiver by any party of any breach of any provision of this Agreement shall be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to, or demand on, any Party in any case shall, of itself, entitle such party to any other or further notice of demand in similar.

26. No Conflicts of Interest.

No member of the governing body of the Chicago Park District (or any person who has served in such capacity during the prior two years), and no other trustee, officer, employee or agent of the Park District shall have any personal, financial or economic interest, direct or indirect, in this Agreement, or any subcontract or the performance of other work resulting therefrom.

27. Non-Liability of Public Officials.

Contractor and any assignee or contractor of Contractor must not charge any official, employee or agent of the Park District personally with any liability or expenses of defense or hold any official, employee or agent of the Park District personally liable to them under any term or provision of the Agreement or because of the Park District's execution, attempted execution or any breach of the Agreement.

28. Confidentiality.

Contractor acknowledges that it is entrusted with or has access to valuable and confidential information and records of the Park District and with respect to that information, Contractor agrees to be held to the standard of care of a fiduciary.

If Contractor is presented with a request for documents by any administrative agency or with a subpoena regarding any records, data or documents which may be in Contractor's possession by reason of the Agreement, Contractor must immediately give notice to the Park District with the understanding that the Park District will have the opportunity to contest such process by any means available to it before the records or documents are submitted to a court or other third party. Contractor, however, is not obligated to withhold the delivery beyond the time ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

29. Minority and Women's Business Enterprises Commitment.

In the performance of the Agreement, including the procurement and lease of materials or equipment, Contractor must abide by the minority and women's business enterprise commitment requirements of the Park District as set forth in the MBE/WBE Compliance Affidavit, attached and incorporated herein as **Exhibit C**, except to the extent waived by the Park District.

30. Equal Employment Opportunity.

Contractor shall comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., as amended, and any rules and regulations promulgated in accordance therewith, including, but not limited to, the Equal Employment Opportunity Clause, Illinois Administrative Code, Title 44, Part 750 (Appendix A), which is incorporated herein by reference.

31. Contractor's Employees.

A. The Park District has the right the require the Contractor to remove from their workforce any employees deemed incompetent, careless, or otherwise objectionable, or any personnel whose actions are deemed to be contrary to public interests or inconsistent with the best interests of the Park District's program.

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C. Contractor's employees are to be considered the employees of the Contractor and not the Park District and, therefore, Contractor shall comply with all Federal and State tax requirements and government regulations.

D. Contractor shall not directly or indirectly hire or otherwise engage any full time Park District employee without the prior written consent of an authorized representative of the Park District.

32. **Prevailing Wage Rates.**

Contractor shall pay all persons employed by Contractor, or its subcontractors, prevailing wages where applicable. As a condition of making payment to the Contractor, the Park District may request the Contractor to submit an affidavit to the effect that not less than the prevailing hourly wage rate is being paid to laborers employed on contracts in accordance with Illinois Law.

33. **Non-Collusion Affidavit.**

Contractor certifies that neither Contractor nor its agents, employees, officers and any subcontractors, has been engaged in or been convicted or collusion activities as defined on the Signature Page, **Exhibit D**, attached and incorporated herein. Such certification is required in accordance with the Illinois Criminal Code.

34. **Counterparts.**

The Agreement is comprised of several identical counterparts, each to be fully signed by the parties and each to be considered an original having identical legal effect.

35. **Change of Address or Business Information.**

The Park District's Director of Purchasing must be notified immediately of any change of address of Contractor, or any change in ownership, or of any change in Contractor's business organization as described in the submitted Economic Disclosure Statement (EDS).

36. **Entire Agreement.**

The Agreement, including the entire RFP and the General Conditions for Landscape and Special Conditions stated therein, and the Exhibits attached to it and incorporated in it, constitute the entire agreement between the parties and no other warranties, inducements, considerations, promises or interpretations are implied or impressed upon the Agreement that are not expressly addressed in the Agreement. If there is a conflict between the language in this Agreement and other language contained in the RFP, then the language in this Agreement shall govern.

Contractor acknowledges that Contractor was given ample opportunity and time and was requested by the Park District to review thoroughly all documents forming the Agreement before signing the Agreement in order that it might request inclusion in the Agreement of any statement, representation, promise or provision that it desired or on that it wished to place reliance.

37. Authority.

The persons signing this Agreement certify that they have power and authority to enter into and execute this Agreement.

IN WITNESS WHEREOF, the duly authorized representatives of the parties hereto have executed this Agreement.

Chicago Park District

By: _____
Michael P. Kelly
General Superintendent & CEO

Moore Landscapes LLC

By: _____

Its: CEO

CHICAGO PARK DISTRICT

CLARIFICATIONS NUMBER 1

October 4, 2017

RFP for DISTRICT-WIDE PLANTING & LANDSCAPING SERVICES and
DISTRICT-WIDE TURF & ATHLETIC FIELD SERVICES

Specification No. P-17022

The following clarifications and/or answers for the above-referenced Request for Proposal (RFP) are hereby incorporated into and made part of the subject RFP.

Clarifications from Pre-Submittal Meeting Held October 4, 2017:

- Chicago Park District has spent $2.5mil-$3mil annually under this contract in the last three years with approximately $1.5mil being allocated for trees.
- Chicago Park District budgets approximately $500k annually for athletic field services.
- 2018 is anticipated to be the last year that ash trees are removed and replaced. This will bring the annual tree installations from 3000 to 1500-2000 (approximately).
- The project scope does not require the Awardee to identify and recommend trees for replacement.
- Attached at the end of this document is the FAQ from Illinois Department of Labor regarding prevailing wage. This is only provided as a resource and is not incorporated into the RFP document.

END CLARIFICATION NUMBER 1

JT Schwimer
Advanced Buyer

Illinois Department of LABOR (/idol/)

www.illinois.gov/idol/FAQs/Pages/Landscaping.aspx

(/idol/search)

IDOL (/idol/Pages/default.aspx) FAQs (/idol/FAQs/Pages/default.aspx) Prevailing Wage Landscaping FAQ

Prevailing Wage Landscaping FAQ

Many questions have been posed to the Department regarding the application of the Prevailing Wage Act (/idol/Laws-Rules/CONMED/Pages/prevailing-wage-act.aspx) to work involving landscape (e.g. plants, bulbs, seeds, bushes, shrubs etc, dirt, organic materials, sod, and nonorganic materials used in connection with landscape) and the issues relating to modifications to real estate because of the uniqueness of the work and materials involved. The Department believes it is appropriate to set forth certain questions and answers, which illustrate the Department's position as a matter of its enforcement policy to issues involving landscape work and the application of the Prevailing Wage Act.

Nothing set forth below should be interpreted as a change in the Departments view regarding traditional "hardscape work" (by way of example and not limitation "work associated with building, making, forming, demolishing brick or concrete paths or walk ways, fountains, concrete or masonry planters or retaining walls") that some might consider or refer to as falling under "landscape work." The Department has considered this work to have fallen under the Prevailing Wage Act and remains covered work under the Prevailing Wage Act.

Where examples are given, they should be considered as examples only to help provide guidance and should not be considered all encompassing.

Is work in connection with landscape work covered under the Prevailing Wage Act?

Work performed in connection with landscape may be covered work depending upon the nature of the work.

Top of page (/idol/FAQs/Pages/Landscaping.aspx#toc)

What established classification of employees under the Prevailing Wage Act covers those employees who perform landscape work, which falls under the coverage of the Prevailing Wage Act?

For the purpose of the Prevailing Wage Act, the Department of Labor does not recognize the classification of "landscape plantsman," "landscape laborer" "landscape helper" "landscape installer" "landscape operator" or "landscape truck driver." Work performed by persons who sometimes may be called "landscape plantsman" or "landscape laborer" is covered by the classification of laborer. Work performed by persons sometimes referred to as "landscape operator" is covered by the classification of operator and work performed by persons sometimes call "landscape truck driver" is covered by the classification of truck driver. Neither bids nor contracts nor acceptances on landscape work covered by the Prevailing Wage Act should be based upon rates of pay other than that those associated with the classifications of laborers, operator, or truck driver the Department has published.

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What are examples of landscape work that is covered under the Prevailing Wage Act when performed in connection with other work covered under the Prevailing Wage Act?

All work involving the installation or removal of landscape materials in conjunction with or as part of work which is otherwise covered under the Prevailing Wage Act is also work covered by the Prevailing Wage Act. For example:

1. original installation of landscape materials in connection with covered work involving buildings or structures
2. landscape work in conjunction with covered work involving any road, boulevard, street, highway, bridge project, sewer or underground project
3. lawn and landscape restoration performed in conjunction with covered work involving trenches and manholes, pipes, cables and conduits
4. preparation of and landscaping of approaches associated with covered work performed in connection with shafts, tunnels, subways, and sewers
5. landscaping of an old or new site in conjunction with covered work involving underpinning, lagging, bracing, propping or shoring
6. landscaping in connection with covered work involving earthmoving and grading

Even if the landscaping is to be performed after completion of the covered project, if it is an integral part of the overall project, it is deemed being performed in conjunction with or part of the project.

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When is landscape work no longer, considered to be performed in conjunction with or as part of a project otherwise covered under the Prevailing Wage Act?

Landscape work is no longer considered to be performed in conjunction with or as part of a project when the architect, project manager, or other appropriate authorized representative issues a certificate of substantial completion to the landscape contractor or other document reflecting substantial completion, such as final payment, which under the contract is to be made upon completion of work. If the manager refuses to issue such a certificate, then when the installation and or removal of all materials as required in the contract has been completed, subsequent work is no longer considered in conjunction with or part of the project.

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Can work associated with landscape work by itself be considered work covered under the Prevailing Wage Act?

When no other covered work such as "hardscape" is involved, the work is not covered work under the Prevailing Wage Act. Covered work under the Prevailing Wage Act would include projects involving:

- earthmoving and grading
- Installation of retaining walls, sidewalks, sprinkler systems, curbs, and other hardscape work.

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What are examples of work associated with landscaping that is not covered work when it is not done in conjunction with or part of covered work?

- lawn mowing or grass cutting
- line trimming
- edging
- weeding
- cultivating beds
- mulch application
- bed preparation using soil amendments
- core aeration
- sweeping and blowing of landscape materials
- pruning, planting, removal or replacement of shrubs, plants, and flowers
- pruning of trees and replacement of trees that are planted as a replacement due to the removal of diseased or irreparably damaged trees, or trees that constitute a hazard
- replacement of sod, the removal of diseased or irreparably damaged trees or trees that are a hazard
- seeding, including the preparation and application of erosion control blanket, application of fertilizer, herbicide, pesticide, fungicide
- aquatic applications, raking, watering of trees, shrubs, plants, flowers, bulbs, seeds and sod
- grooming
- dividing plants
- dead-leafing
- sweeping
- trash pick-up and removal of landscape litter;
- snow removal
- holiday light and seasonal decoration installation

UNPAID WAGES

Wage Payment and Collection Act FAQ
(/idol/FAQs/Pages/wage-payment-faq.aspx)

Bonus Pay and Severance and Commission FAQ
(/idol/FAQs/Pages/Other-Pay-FAQ.aspx)

Holiday FAQ
(/idol/FAQs/Pages/Holiday-FAQ.aspx)

Vacation FAQ
(/idol/FAQs/Pages/Vacation-FAQ.aspx)

Form Of Payment FAQ
(/idol/FAQs/Pages/Form-Of-Payment.aspx)

Deductions From Pay FAQ

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FIRST JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT
COOK COUNTY, ILLINOIS

SAMUEL VALERIO
Plaintiff/Petitioner

Reviewing Court No: 1-19-0185
Circuit Court No: 2018L009656
Trial Judge: MARGARET BRENNAN

v.

MOORE LANDSCAPING, INC.
Defendant/Respondent

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