

# GENERAL CONDITIONS

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## SECTION 1.00 - DEFINITIONS

- 1.01        GENERAL: For the purposes of the Contract Documents and any documents or instruments dealing with the construction, operations governed by these documents, the terms defined in this section have the meanings given them.
- 1.02        ADDENDUM: A supplement to the proposal form as originally issued or printed, covering additions, corrections, or changes in the bidding conditions for the advertised work, that is issued by the Contracting Authority to prospective bidders prior to the date set for opening of proposals.
- 1.03        BID: The written offer or copy thereof of a bidder to perform the work described by the Contract Documents when made out and submitted on the prescribed bid form properly signed and guaranteed.
- 1.04        BIDDER: An individual, firm, partnership or corporation, or combination thereof, submitting a bid for the work contemplated and acting directly or through a duly authorized representative.
- 1.05        CALENDAR DAY: Every day shown on the calendar.
- 1.06        CHANGE ORDER: A written order to the Contractor authorizing an addition, deletion or revision in the work within the general scope of the Contract Documents, or authorizing an adjustment in the contract price or time of completion.
- 1.07        CONTRACT: The written agreement between the Contracting Authority and the Contractor setting forth their obligations, including, but not limited to, the performance of the work, the furnishing of labor and materials, the basis of payment, and other requirements contained in the Contract Documents.

The Contract Documents consist of the following:

- (1)    Legal and Procedural Documents
  - (a) Advertisement for Bids
  - (b) Information for Bidders
  - (c) Bid
  - (d) Proposal Guaranty
  - (e) Contract
  - (f) Performance Bond
  - (g) Payment Bond
  - (h) Affidavit of Non-Collusion
  - (i) Contractor Verification of Compliance
  - (j) Responsible Contractor Verification Of Compliance
  - (k) Certificate of Insurance
  - (l) Notice of Award
  - (m) Notice to Proceed
  
- (2)    Special Provisions

- (3) Specifications
- (4) General Conditions
- (5) Plans
- (6) Addenda
- (7) Supplemental Agreements & Change Orders

- 1.08 PERFORMANCE BOND: The Contractor's Performance Bond required by the Contract Documents.
- 1.09 PAYMENT BOND: The Contractor's Payment Bond required by the Contract Documents.
- 1.10 CONTRACT PRICE: The total moneys payable to the Contractor under the terms and conditions of the Contract Documents.
- 1.11 CONTRACTOR: The person, firm or corporation with whom the Owner has executed the contract agreement.
- 1.12 DRUG AND ALCOHOL TESTING: Refers to the Federal Highway Administration (FHWA) drug use and alcohol testing rules published February 15, 1994, which apply to persons required to have a commercial driver's license(CDL).
- 1.13 CITY ENGINEER: The City of Chanhassen's employee in charge of overseeing all capital projects and engineering matters.
- 1.14 ENGINEER: The duly authorized engineering representative of the Owner, acting directly or through his/her designated representatives who have been delegated the responsibility for engineering project administration.
- 1.15 FIELD ORDER: A written order affecting a change in the work not involving an adjustment in the contract price or an extension of the contract time, issued by the Engineer to the Contractor during construction.
- 1.16 GOVERNMENTAL AGENCY: A governmental unit other than the Owner having jurisdiction of the premises.
- 1.17 INSPECTOR: An authorized representative of the Engineer, assigned to make any or all necessary inspections of the work performed and the materials furnished by the Contractor.
- 1.18 LABORATORY: The testing laboratory of the Owner or any other testing laboratory which may be designated by the Owner.
- 1.19 NOTICE OF AWARD: The written notice of the acceptance of the bid issued by the Owner to the successful bidder.

- 1.20 NOTICE TO PROCEED: The written notice issued by the Owner to the Contractor authorizing him to proceed with the work and establishing the date of commencement of the work.
- 1.21 OWNER: A private, public or quasi-public body or authority, corporation, association, partnership, or individual for whom the work is to be performed.
- 1.22 PLANS: The official drawings, plans, profiles, typical cross sections and supplemental drawings, or reproductions thereof, prepared by the Engineer, which show the location, character, dimensions and details of work to be performed. All such drawings, as listed elsewhere in the Contract Documents, are a part of the plans whether attached to the Contract Documents or separate therefrom.
- 1.23 PROJECT: The undertaking to be performed as provided in the Contract Documents.
- 1.24 PROPOSAL FORM: The approved form on which the contracting authority requires bids to be prepared and submitted for the work.
- 1.25 PROPOSAL GUARANTY: The security furnished with a bid to guarantee that the bidder will enter into the Contract if the bid is accepted.
- 1.26 SHOP DRAWINGS: All drawings, diagrams, framework plans, falsework plans, erection plans, illustrations, brochures, schedules and other data which are prepared by the Contractor, a subcontractor, manufacturer, supplier or distributor, which illustrate how specific portions of the work shall be fabricated or installed.
- 1.27 SPECIAL PROVISIONS: Contract requirements specific to the project which are not otherwise thoroughly or satisfactorily detailed and set forth in the detail specifications or plans.
- 1.28 SPECIFICATIONS: The directions, provisions, and requirements contained herein, together with all written agreements made or to be made pertaining to the method and manner of performing the work, or to the quantities and qualities of materials to be furnished under the contract.
- 1.29 SUBCONTRACTOR: An individual, firm, or corporation to whom the contractor sublets part of the Contract.
- 1.30 SUBSTANTIAL COMPLETION: That date as certified by the Engineer when the construction of the project or a specified part thereof is sufficiently completed, in accordance with the Contract Documents, so that the project or specified part can be utilized for the purposes for which it is intended.
- 1.31 SUPPLEMENTAL GENERAL CONDITIONS: Modifications to generate conditions required by a local, state or federal agency for participation in the project and approved by the agency in writing prior to inclusion in the Contract Documents.

- 1.32        SUPPLIER: Any person, or organization who supplies materials or equipment for the work, including that fabricated to a special design, but who does not perform labor at the site.
- 1.33        SURETY: The person, firm, or corporation who executes the proposal guaranty or the contract bond.
- 1.34        TIME OF COMPLETION: The date set in Contract Documents for completion of the work; or number of working or calendar days after notice to proceed set out in Contract Documents (See also Section 8.07 of the General Conditions).
- 1.35        WORK: The furnishing of all labor, materials, equipment, and other incidentals necessary or convenient to the successful completion of the project and the carrying out of all duties and obligations imposed by the contract upon the Contractor.
- 1.36        WORKING DAYS: Any day, excluding Saturday, Sunday or State recognized Legal Holidays, when weather conditions or the results of weather conditions will allow the Contractor to pursue, for two hours between 8:00 a.m. and 4:30 p.m. with the normal working force, any item or items of work which would be in progress at that time.

## SECTION 2.00 - BIDDING REQUIREMENTS AND CONDITIONS

### 2.01 QUALIFICATIONS OF BIDDERS

If requested, bidders must present satisfactory evidence that they are familiar with the class of work specified, and that they are provided with the necessary capital, tools, machinery and other equipment necessary to conduct the work and complete the improvement within the time specified in the proposal, in a good and workmanlike manner and to the entire satisfaction of the Owner.

The Owner will review the qualifications and experience of bidders after bids are opened and before a contract is awarded, to determine if the bidder is "responsible." A "responsible" bidder is a bidder qualified to do the work. This will be determined by assessing the bidder's skill, resources, experience, successful performance of similar contracts (on time and on budget), and all other matters bearing upon the likelihood that the contract will be successfully completed. In all cases where a bidder is unknown or where there are any questions about the qualifications of the bidder, the following information may be required of the apparent low bidder:

- A. Identify all similar public projects in which you were the contractor. If you have had more than five such contracts, list only the last five contracts, and as to each contract identified, provide the following information:

Project Description: Date:  
Contact Person at City/County/State:

Were change orders in excess of 5% requested? If yes, explain the circumstances.

Were liquidated damages assessed? If yes, explain the circumstances. Was the project completed on schedule? If no, explain the circumstances.

- B. Describe all construction arbitration claims and any construction or project litigation in which you have been a party in the last five years.
- C. Identify all public projects you have had with the City of Chanhassen in the last five years.
- D. In the last five years, has a bonding company ever refused to issue you a performance bond? If yes, explain the circumstances.
- E. In the last five years, have any claims been filed against a performance or payment bond that you have provided a public entity? If yes, explain the circumstances.
- F. In the last five years, has your firm or any of its owners or employees been fined by a federal or state agency for a contract or workplace matter (such as wage or hour or safety violations), or debarred under Part 29, Title 49 CFR or any other law from submitting bids on public projects? If yes, explain the circumstances.



- G. In the last five years, has your firm or any of its owners or employees been charged or convicted of a crime involving the awarding, bidding or performance of a government contract? If yes, provide full details.

The bidder agrees that they are fully responsible to the Owner for the acts and omissions of any proposed subcontractors and of persons either directly or indirectly employed by them, as they are for the acts and omissions of persons directly employed by them.

Failure on the part of any bidder to carry out previous contracts satisfactorily, or lack of experience or equipment necessary for the satisfactory completion of the project, may be deemed sufficient cause for disqualification.

## 2.02 CONTRACT DOCUMENT INTERPRETATIONS

All applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout, and the Contractor shall be responsible for familiarizing themselves with all permits, bond and other requirements for the work to be performed.

All work shall be performed in accordance with the most recent version of the City of Chanhassen Standard Specifications and Detail Plates. In the event a work item is not addressed in the Chanhassen Standard Specifications and Detail Plates, the most recent version of the Minnesota Department of Transportation Standard Specifications shall govern. Whenever reference is made to the Minnesota Department of Transportation Standard Specifications, the word "Owner" shall be substituted for "State" and "Department" where appropriate and the word "Engineer" is understood to refer to the engineer for the Owner.

The City of Chanhassen Standard Plates included as part of these Specifications take precedence over the Minnesota Department of Transportation Standard Plates in all instances of conflict.

If any person contemplating the submitting of a bid for a proposed contract is in doubt as to the true meaning of any part of the plans, specifications or other proposed Contract Documents, they may submit to the Engineer a written request for an interpretation thereof at least three days prior to the scheduled bid opening. The persons submitting the request will be responsible for prompt delivery to the Engineer. Any interpretation of the proposed documents shall be made by addendum, duly numbered and dated. A copy of such addendum will be posted to QuestCDN, and each bidder shall acknowledge receipt of that addendum on their proposal form. Such addendum will be attached to all documents issued after the date of the addendum and shall remain a part thereof. The Owner and Engineer will not be responsible for any other explanation or interpretation.

The Owner reserves the right to modify the plans, specifications, special provisions, or proposal at any time prior to bids being opened, in accordance with the procedures for issuance of an addendum.

All proposals shall be made and received with the express understanding that the Bidder accepts the terms and conditions contained in these instructions and the plans and specifications, forms of contract and bond, and any other Contract Documents referred to herein.

If, after the bids have been delivered to the Owner, any difference of opinion shall arise as to the true intent or meaning of any part of the specifications, the decision of the Engineer shall be final, conclusive, and binding on all parties.

### 2.03 INTERPRETATION OF QUANTITIES IN BID SCHEDULE

The schedule of quantities is approximate only and is assumed solely for the purpose of comparing bids. The quantities on which payment will be made to the Contractor are to be determined by measurements of the work actually performed by the Contractor as specified in the Contract Documents.

### 2.04 SITE INVESTIGATION

Each bidder must satisfy themselves and form their own opinions by personal examination of the location and ground of the proposed work, and by such other means as they may desire, as to the actual conditions and requirements of the work, including the materials to be excavated; must make their own interpretations and satisfy themselves by their own investigations and research regarding all conditions affecting the work to be done and the labor and materials needed, and shall make their sole reliance thereon. Any information or data furnished by the Owner or its representatives is for the convenience of any bidder and is not guaranteed. The bidder shall thoroughly examine and familiarize themselves with the Drawings, Special Provisions, and all other Contract Documents. The Contractor, by the execution of the contract, shall accept all responsibility for having examined the site and acquainted themselves with the conditions there existing and the conditions of the contract. The Owner will be justified in rejecting any claim based upon the Contractor's lack of proper examination of the site conditions and legal obligations of the contract after execution of the contract.

### 2.05 SUBMISSION OF PROPOSAL

Sealed bids will be received by the Owner up to the date and hour as specified in the Advertisement for Bids at the office of the Owner or as otherwise specified. Bids received after the time specified shall be returned unopened.

All bids must be in ink upon the bid form included in the Specifications with a given price for each item and aggregate amount for the work, and must be signed and acknowledged by the bidder in accordance with the directions on the bid form. If a separate proposal form is provided, this separate form is to be submitted, not the form bound into the specification book. In order to ensure consideration, the bid shall be enclosed in a sealed envelope addressed to the Owner and clearly marked as to the time and date of bid opening, the name of the project, and name and address of bidder.

## 2.06 PROPOSAL GUARANTY

Each bid shall be accompanied by a Proposal Guaranty in the form of a money order, certified check or bid bond, payable to the order of the owner in an amount not less than five percent (5%) of the total amount of the bid. No bid will be considered unless accompanied by the Proposal Guaranty.

In case alternate bids are called for, one Proposal Guaranty in the amount of five percent (5%) of the total amount of the highest bid alternative will be sufficient for all bids.

As soon as the bids have been tabulated, all Proposal Guarantees shall be returned to the bidders, except those of the three lowest responsible bidders, which shall be returned after the agreement is executed and the required bonds and insurance received, approved, and accepted by the Owner.

## 2.07 AFFIDAVIT OF NON-COLLUSION

Each bidder shall submit with his/her proposal, an affidavit of non-collusion, signed by one of the officers of the firm and notarized. The Affidavit to be used is bound into these Contract Documents. A sample affidavit is included in the attachments.

## 2.08 WITHDRAWAL OF PROPOSALS

Any bid may be withdrawn or modified prior to the schedule time for the opening of bids or authorized postponement thereof.

After the time set for opening of the bids, no bidder may, without the consent of the Owner, withdraw their bid or claim extra compensation or damages for any error or omission made by said bidder in preparing their bid, for a period of 60 days. Bid guarantees may be held by the Owner for said 60 days until all of the bids submitted have been canvassed, a contract awarded and executed, and the required bonds and insurance furnished and approved. Should there be reasons why the contract cannot be awarded within the specified period, the time may be extended by mutual agreement between the Owner and the bidder.

## **SECTION 3.00 - AWARD AND EXECUTION OF CONTRACT**

### 3.01 EVALUATION OF PROPOSALS

The bids from each responsible bidder will be considered on the basis of the amounts as shown on the bid form, and awarded to the lowest bidder determined by correctly adding the products resulting from correctly multiplying the quantities stated by the unit prices bid therefore, and as otherwise described in the Special Provisions when alternate bids are included in the proposal form.

The prices are to include the furnishing of all materials; all labor and services necessary or proper for the completion of work, except such as may be otherwise expressly provided in the Contract Documents.

The Owner reserves the right to reject any or all bids or to accept the bid deemed in the best interest of the Owner. Without limiting the generality of the foregoing, any bid which is incomplete, obscure, or irregular may be rejected; any bid having erasures or corrections in the price sheet may be rejected; any bid which omits an amount on any one or more items in the price sheet may be rejected; any bid in which unit prices are obviously unbalanced may be rejected; any bid accompanied by an insufficient or irregular bid bond may be rejected; any bid which omits acknowledgment of the receipt of addenda may be rejected.

The Owner may make such investigations as deemed necessary to determine the ability of the bidder to perform the work, and the bidder shall furnish to the Owner all such information and data for this purpose as the Owner may request. The Owner reserves the right to reject any bid if the evidence submitted by, or investigation of, such bidder fails to satisfy the Owner that such bidder is properly qualified to carry out the obligations of the Agreement and to complete the work contemplated therein. All bids shall be subject to review and approval of the Owner.

### 3.02 CONTRACT AWARD AND EXECUTION

Following acceptance of the bid by the Owner, a "Notice of Award" letter will be mailed to the Contractor together with the prepared contract agreements for signature and return. The Notice of Award letter will specify that the Contractor also submit affidavits or copies of insurance coverage, a payment bond and a performance bond. No contract will be executed until the required affidavits and bonds are submitted and have been approved as to form by the Owner.

The performance bond and payment bond shall each be in the amount of 100 percent of the contract price with a corporate surety approved by the Owner. Attorneys-in-fact who sign bid bonds or performance bonds must file with each bond a certified and effective dated copy of their power of attorney.

For purposes of the agreement, affidavit of insurance, the payment bond, and performance bond, the contract amount is the bid amount accepted by the Owner. The final amount of the contract shall be determined by summation of multiplying and summing the resulting product of the final measured quantities of the various items actually constructed and installed by the unit prices stated therefore, in the manner prescribed in the specification.

The party to whom the contract is awarded will be required to execute the Agreement, obtain the affidavits, the payment bond, and the performance bond, and return them to the Engineer within 10 calendar days from the date when Notice of Award is delivered to the bidder. In case of failure of the bidder to complete these items, the Owner may at their option consider the bidder in default, in which case the bid guaranty accompanying the proposal shall become the property of the Owner.

The Owner within 10 calendar days of receipt of acceptable performance and payment bonds, affidavits and Agreement signed by the bidder to whom the Agreement was awarded shall sign the Agreement and return to the bidder an executed duplicate of the Agreement. Should the Owner not execute the Agreement within such period, the bidder may by written notice withdraw their signed Agreement. Such notice of withdrawal shall be effective upon receipt of the notice by the Owner.

A notice to proceed shall be issued within 10 calendar days of the execution of the Agreement by the Owner. Should there be reasons why the Notice to Proceed cannot be issued within such period, the time may be extended by mutual agreement between the Owner and Contractor. If the Notice to Proceed has not been issued within the 10 calendar day period or within the period mutually agreed upon, the Contractor may terminate the Agreement without further liability on the part of either party.

The Notice of Award letter is not an order to proceed. The Contractor will have no authority to perform work under this contract until all Contract Documents as indicated above are properly completed and placed on file at the Owner's Offices and a Notice to Proceed is issued by the Owner.

A Notice to Proceed with the work under this project will be sent to the Contractor upon satisfaction of the above-indicated requirements and after a preconstruction conference is held.

### 3.03 PROPOSAL ALTERNATES

When a project includes a bid alternate, all bidders are required to submit pricing for said alternate as a part of their bid. The Owner reserves the right to accept or reject any or all of the individual items included as a part of the bid alternate. The Owner-accepted bid alternate items' prices will be considered as part of the low bid determination for contract award. If all alternates are rejected, the lowest base bid submitted will be considered the low bid for purposes of contract award.

### 3.04 CONTRACT SECURITY & GUARANTY

The successful bidder shall be required to furnish the Owner with a performance bond and payment bond in the form required by law, each in an amount of one hundred (100%) percent of the contract amount, based on the lump sum or the anticipated quantities and unit prices, as determined by the Engineer.

The bonds shall guarantee the proper prosecution and completion of the work by the successful bidder; and shall further guarantee the prompt payment by the successful bidder or all persons or firms furnishing labor, tools, materials and supplies for the

work.

Upon completion of said work, an acceptable and separate 100% maintenance bond shall be furnished to guarantee the quality of material and workmanship of said work for a period of two years from the date of final acceptance by the City. The Contractor may not release the surety company on this 100% maintenance bond until a written release of said 100% maintenance bond is given by the Owner.

When a period of two years has elapsed after the date of the acceptance of the work by the Owner and if upon inspection by the Owner the work is found in good condition the maintenance bond shall be released.

If it is found by the inspection after two years use that some of the work and some of the materials are defective, such work or materials shall be replaced or repaired by the Contractor, and only when the Contractor has properly replaced and repaired such defective work and/or materials will the Owner then release the 100% maintenance bond. In the event that the Contractor fails to meet the time obligations of the initial maintenance bond and requests an extension of time, a \$1,000 escrow will be required to offset additional costs incurred by the Owner to administrate the maintenance bond extension.

### 3.05 PRECONSTRUCTION CONFERENCE

Prior to the start of any work there shall be a pre-construction conference arranged by the Engineer. Representatives of the Owner, Engineer, Developer, Contractor, Subcontractor, Project Foreman, and Utility Companies shall be notified to be present at this meeting.

The Contractor's project superintendent shall be familiar with all phases of the work to be executed and shall oversee the work during its progress. The project superintendent shall represent the Contractor, and communications and directions given to the superintendent shall be as binding as if given to the Contractor.

The Contractor's list of subcontractors and suppliers shall be submitted and reviewed along with scheduling, materials (including bituminous mix design), material sources, proposed haul routes, construction methods, desired materials substitutions, and any other information necessary for the orderly execution of the work.

The specifications and certifications for all products, materials and supplies furnished shall be submitted for review prior to the preconstruction conference.

### 3.06 FAILURE TO EXECUTE CONTRACT

Failure on the part of the successful bidder to execute the Contract, furnish an acceptable bond, or comply with any other requirements imposed precedent to the Contract, within the time allowed, shall be considered just cause for cancellation of the award and forfeiture of the Proposal Guaranty, not as a penalty, but in liquidation of damages sustained. Award may then be made to the next lowest responsible bidder, or the work may be re-advertised or otherwise performed at the discretion of the Owner.

## **SECTION 4.00 - SCOPE OF WORK**

### 4.01 ADDITIONAL INSTRUCTIONS

If the instructions and plans are not sufficiently clear to permit the Contractor to proceed with the work, the Engineer shall, upon the request of the Contractor, furnish additional written instruction, together with additional drawings as may be necessary. When such request is made by the Contractor, it must be in ample time to permit the preparation of the instructions and drawings by the Engineer before the construction of the work covered by them is undertaken. Such additional instructions and drawings shall be consistent with the Contract Documents and shall have the same force and effect as if contained in the original Contract Documents.

For the purpose of avoiding delays in the preparation of such additional instructions and drawings, the Engineer and the Contractor shall jointly prepare a schedule showing the time for the commencement of the work to be included in them and the time the Contractor shall furnish the necessary shop drawings which may be necessary for their preparation. The Contractor shall do no work without proper drawings or instructions and shall replace any work not in accordance with such drawings and instructions at no additional cost.

### 4.02 CHANGES OR ALTERATIONS IN THE WORK

The Owner, without invalidating the contract, may order extra work or make changes by altering, adding to or deducting from the work; the contract sum being adjusted according to the respective unit bid prices. All such work shall be executed under the conditions of the original contract, except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

If the Contractor claims that any instructions by drawings or otherwise issued after the date of the contract involved extra cost under the contract, the Engineer shall be given written notice thereof within seven days, after the receipt of such instructions, and in any event before proceeding to execute the work, except emergency endangering life or property, and the procedure shall then be as provided for elsewhere herein for changes in the work. No such claim shall be valid unless so made.

In giving instructions, the Engineer shall have authority to make minor changes in the work, not involving extra cost, and not inconsistent with the purposes of the work but otherwise (except in an emergency endangering life or property) no extra work or change shall be made unless in pursuance of a written order by the Engineer.

### 4.03 ORAL AGREEMENTS

No oral order, objection, claim or notice by any party to the others shall affect or modify any of the terms or obligations contained in any of the contract documents, and none of the provisions of the Contract Documents shall be held to be waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver or modification thereof in writing, signed by the parties to be bound or by the representatives of the parties authorized to enter into such a waiver or modification, and no evidence shall be introduced in any proceeding of any other waiver or modification.

#### 4.04 INTERPRETATIONS AND CHANGE ORDERS

No oral interpretation shall be made to the Contractor as to the meaning of any of the Contract Documents or to modify any of the provisions of the Contract Documents. Every request for an interpretation shall be made in writing and addressed and forwarded to the Engineer. The Owner will not be responsible for any other explanation or interpretation of the plans and specifications.

If unforeseen conditions require a change in the dimensions of a structure, location of underground pipes, or major variations of a similar nature from the original plans, necessitating exceeding the reasonable limits defined above, or being of the nature of a substantial departure from the original plans, such change shall be covered by a change order. The change order is to set forth in complete detail the nature of the change and reasons therefore. The compensation to be paid the Contractor and whether it is an addition or a reduction with respect to the original contract costs is also to be covered in detail. Should additional or supplemental drawings be required, they will be furnished by the Engineer.

#### 4.05 SALVAGE

Unless otherwise indicated on the plans or in the Special Provisions, all castings, pipe and any other material taken from the work shall be the property of the Contractor.

#### 4.06 FOSSILS

If any fossils, treasure or other unusual or valuable geological formations are found in the progress of excavating, such fossils, treasure or samples of geological formations shall be carefully preserved by the Contractor and the Contractor shall restrict or suspend operations in the immediate area of the discovery and shall immediately notify the Engineer of the discovery. The suspension of work for a period not to exceed 72 hours shall be allowed without claim by the Contractor for any damages as a result thereof. These items shall become the property of the state or federal agency concerned with their preservation and study.

#### 4.07 CLEANUP

The Contractor shall, at no cost to the Owner, clean up and remove all refuse and unused materials of any kind resulting from the work. Upon failure to do so within 72 hours after request by the Engineer, the work may be done by the Owner and cost thereof be charged to the Contractor and deducted from the final estimate.



## SECTION 5.00 - CONTROL OF WORK

### 5.01 ENGINEER'S RESPONSIBILITY AND AUTHORITY

The Engineer is responsible for the general supervision and direction of the inspection. The Engineer will decide all questions regarding:

- Quality and acceptability of materials furnished and work performed.
- Manner of performance and rate of progress of the work.
- Interpretation of the Plans, Specifications, and Special Provisions.
- Measurement, control of quantities, and the amount of any deductions or adjustments to be made in payment.
- Acceptable fulfillment of all Contract Provisions on the part of the Contractor.

The Engineer is not responsible for the acts or omissions of the Contractor's superintendent or employees.

The Engineer shall, within a reasonable time after receiving written notification, make decisions in writing on all claims of the Owner or the Contractor and on all other matters relating to the execution and progress of the work or the interpretation of the Contract Documents.

All such decisions of the Engineer shall be final, except where time or financial considerations are involved, in which case, the decision is subject to arbitration (if less than \$10,000) as per these general conditions. Any dispute over \$10,000 shall be settled in Carver County District Court.

Failure to condemn any inferior material or work at the time of its use or construction shall not be construed as an acceptance of the same, but the Contractor shall upon notice from the Engineer at any time prior to the final acceptance of the improvement immediately tear out, remove and properly reconstruct, at no cost to the Owner, any portion of this improvement which the Engineer may decide to be defective and the Contractor will be held wholly responsible for the safety, proper construction and perfection of the entire improvement until the same has been finally accepted and paid for by the Owner.

The Engineer will make final inspection of all work included in the contract or any portion thereof, as soon as practicable after notification by the Contractor that such work is nearing completion. If such work is not acceptable to the Engineer at the time of the inspection, the Contractor will be advised in writing as to the particular defects to be remedied before such work can be accepted. If, within a period of ten days after such notification, the Contractor has not taken steps to speedily complete the work as directed, the Engineer may, without further notice and without in any way impairing the contract, make such other arrangements as deemed necessary to have such work completed in a satisfactory manner without regard to remaining contract completion

time. The cost of completing such work shall be deducted from any moneys due, or which may become due the Contractor on the contract.

#### 5.02 INTENT OF PLANS AND SPECIFICATIONS

The intent of the plans and specifications is that the Contractor furnishes all labor and materials, equipment and transportation necessary for the proper execution of the work unless specifically noted otherwise. The Contractor shall do all the work shown on the plans and described in the specifications and all incidental work necessary to complete the project in an acceptable manner and to fully complete the work or project, ready for use, occupancy and operation of the Owner.

It is further the intention of the plans and specifications to set forth requirements of performance, type of equipment and structures, and standards of materials and construction, to require new material and equipment unless otherwise indicated and to require complete performance of the work without specific reference to any minor component part. It is not intended, however, that materials or work not covered by the specifications shall be supplied unless distinctly so noted. Materials or work described in words, which so applied have a well-known technical or trade meaning, shall be held to refer to such recognized standards.

All work shall be completed in accordance with the specifications and plans, and in compliance with applicable laws of Federal, State and local governments.

#### 5.03 SHOP DRAWINGS

The Contractor shall, upon request, submit shop drawings in quadruplicate for the approval of the Engineer.

#### 5.04 DIMENSIONS

Figured dimensions on the plans will be used in preference to scaling the drawings. Where the work of the Contractor is affected by finish dimensions or manufacturer's equipment, these shall be determined by the Contractor at the site, and s/he shall assume the responsibility therefore.

#### 5.05 MODELS

All models prepared for this work, in accordance with requirements of plans and specifications, shall become the property of the Owner at the completion of the work.

#### 5.06 ADEQUACY OF PLANS AND SPECIFICATIONS

The complete requirements of the work to be performed under the contract shall be set forth in plans and specifications to be supplied by the Owner through the Engineer or by the Engineer as representative of the Owner.

### 5.07 CONFLICT

In the case of a conflict of meaning between any of the terms of the Contract Documents, the provisions of the document listed first below over those of a document listed later:

1. Contract Agreement Form
2. Special Provisions
3. Plans
4. Specifications
5. General Conditions
6. Bid
7. Bid Form

Special provisions and detail plans are intended to modify and prevail over standard plans and specifications.

### 5.08 DISCREPANCIES IN PLANS

The drawings, specifications, and other parts of the plans are intended to complement one another. Anything shown on the drawings but not mentioned in the specifications, or vice versa, or anything not expressly set forth in either but which is reasonably implied, shall be furnished as though specifically shown and mentioned in both without any extra charge. Should anything be omitted from the drawings and necessary to the proper construction of the work herein described, it shall be the duty of the Contractor to notify the Engineer prior to beginning work; and in the event of the Contractor failing to give such notice, the Contractor shall make good any damage or defect in work caused thereby, without extra charge to the owner.

Questions as to meaning of plans and specifications shall be interpreted by the Engineer, whose decisions shall be final and binding on all parties concerned. (See also Section 5.01 of these General Conditions.) The Engineer will provide the Contractor with such information as may be required to show revised or additional details of construction. The Engineer will provide full information when errors or omissions in the plans and specifications are discovered. Any work done by the Contractor, after discovery of such discrepancies, errors or omissions and prior to a decision by the Engineer, shall be done at the Contractor's risk.

### 5.09 SEPARATE CONTRACTS

The Owner reserves the right to let other contracts in connection with this work. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate the work with that of other contractors.

If any part of the Contractor's work depends for proper execution or results upon the work of any other Contractor, the Contractor shall inspect and promptly report to the Engineer any defects in such work that render it unsuitable for such proper execution and results. Failure to so inspect and report shall constitute an acceptance of the other Contractor's work.

To insure the proper execution of the work, the Contractor shall measure work already in place and shall at once report to the Engineer any discrepancy between the executed work and the drawings.

#### 5.10 PLANS AND SPECIFICATIONS AT JOB SITE

One complete set of all plans and specifications shall be maintained by the Contractor at the job site and shall be available to the Engineer at all times.

The Owner retains the right of access to all plans, specifications and drawings.

#### 5.11 MOVING OF PUBLIC AND PRIVATE UTILITIES

The Owner will give reasonable notice to all affected utility companies of the potential necessity of movement of their installations prior to commencement of the work. It shall be the responsibility of the Contractor to coordinate the work with the utility companies.

It is provided that no utility, private or public, shall be moved to accommodate the Contractor's equipment or the method of operation when such utility does not conflict with the installation of the improvement under construction unless the costs of such removal shall be at the expense of the Contractor.

The Contractor shall notify the proper representatives of any public utility, corporation, and company or individual, not less than 48 hours in advance of any work which might damage or interfere with the operation of their or his/her property along or adjacent to the work.

#### 5.12 PROTECTION OF EXISTING IMPROVEMENTS AND UTILITIES

Prior to construction, the Contractor shall obtain field locations or other assistance as may be required to determine the existence and location of gas main and other private utilities as well as public utilities of the City, County, or State which may be underground or overhead within street and highway right of way or within easements and which may be interfered with under this contract.

In cases where the alignment, as shown on the plans, coincides with the existing location of either an overhead or underground privately owned utility so that, in the opinion of the Engineer, the relocation of said utility is required to complete the installation, the Owner shall provide for such relocation unless specified otherwise in the Special Provisions.

Existing underground, surface or overhead structures are not necessarily shown on the plans. Those shown are only approximate and no responsibility is assumed by the Owner or the Engineer for the accuracy of location. The Contractor shall make such investigations as are necessary to determine the extent to which existing structures may interfere with the work contemplated under this contract.

The sizes, locations and depths of such structures as are shown on the plans and

profiles are only approximate and the Contractor shall verify the accuracy of the information given.

The Contractor shall support and protect by timbers or otherwise, all pipes, conduits, poles, wires or other apparatus which may be in any way affected by the work.

At all shaft sites and on all open cut work, the Contractor shall provide and maintain free access to fire hydrants, water and gas valves, manholes and similar facilities. Gutters and waterways shall be kept open or other satisfactory provisions made for the removal of the storm water.

The Contractor shall provide as incidental to the work all methods for adequately draining the work and shall assume full responsibility and liability for damage to any persons or property resulting from such damage.

No trees shall be cut except upon the specific authority of the Engineer. Trees adjacent to the work shall be protected from all damage by the construction operations.

Storm and sanitary sewers must be carefully protected from any sand or debris and any such deposition caused by the Contractor's operations must be removed from the manholes and pipes by the Contractor.

Prior to construction commencement, the Contractor shall notify the Owner and conduct an inspection of potentially affected existing public utilities noting conditions such as sand in manholes or damaged valve boxes prior to the Contractor's construction. Once construction has commenced it will be assumed that all damage to surface and underground installations not previously noted has been caused by the Contractor's operations. The Contractor will be responsible to make the necessary corrections and/or repairs.

### 5.13 DAMAGE TO EXISTING IMPROVEMENTS OR UTILITIES

If, through the Contractor's operations, any of said pipes, conduits, poles, wires, or apparatus should be damaged, they shall be repaired by the authorities having control of same, and the expense of such repairs shall be charged to the Contractor.

The Contractor shall indemnify and save the Owner and Engineer harmless from claims for any damage done to any street or other public property; or to any private property by reason of breaking of any water pipe, sewer or gas pipe, electric conduit, or other utility by or through the Contractor's negligence.

The Contractor shall restore, or have restored at his/her own cost and expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding, or otherwise restoring as may be directed, or shall make good such damage from injury in a manner acceptable to the Owner or the Engineer. In case of failure on the part of the Contractor to restore such property or make good such damage or injury, the Engineer may, upon 48 hours written notice under ordinary circumstances and without notice when a nuisance or hazardous

condition results, proceed to repair, rebuild, or otherwise restore such property as may be determined necessary, and the cost thereof will be deducted from any moneys due to the Contractor under this contract and if not so deducted, the Contractor will be obligated to forth with reimburse the Owner for the cost thereof.

The Contractor shall indemnify and save the Owner and Engineer harmless from claims brought for or on account of any damage, maintenance, removal or replacement, or relocation of mains, conduits, pipes, wires, cables or other such structures of private utility firms or corporations, whether underground or overhead, that may be caused or required by the Contractor during the time the work is in progress.

The Contractor shall not claim or be entitled to receive compensation for any damages sustained by reason of the inaccuracy or the omission of any of the information given on the drawings, relative to the surface, overhead, or underground structures or by reason of the Contractor's failure to properly protect and to maintain such structures.

The Contractor is to exercise extreme care in crossing or working adjacent to all utilities and shall be responsible to protect and maintain their operation during the time the work is in progress. The Contractor shall restore, at no cost to the Owner, any public structures such as water mains, water connections and appurtenances, sewers, manholes, catch basins and sewer connections which are damaged or injured in any way by his/her acts.

No trees shall be removed without permission of the Engineer. No compensation will be paid for cutting down, removing and disposing of shrubs. Any trees or shrubs deemed savable will be field located by the Engineer and shall be fully protected by this Contractor during construction. Any trees removed or damaged by the Contractor, which were deemed savable by the Engineer, will be replaced at the Contractor's expense with a new tree as near in size and kind as possible, but never larger than 6" caliper as measured six inches (6") above the ground surface.

All trimming of trees has to be approved by the Engineer. All trees damaged during construction shall be trimmed and repaired.

The following procedures shall be adhered to when constructing utilities near trees.

- A. Cut roots cleanly.
- B. Backfill trench as soon as possible; do not leave the roots exposed to air.
- C. No equipment or construction materials shall be stored beneath a tree's drip line.
- D. Clean up around trees immediately after construction.

#### 5.14 MONUMENTS AND STAKES

The Contractor shall not disturb any monuments or stakes found on the line of this improvement until ordered by the Engineer. The Engineer will furnish and set all new monuments or stakes

required along the line of this improvement, but the Contractor will be responsible for their protection.

In case any monument or stake is disturbed by the Contractor without orders from the Engineer, the Contractor will be charged with cost of the survey and other work required to relocate the same.

Prior to the start of construction, the Contractor shall give the Engineer five working days written notice when s/he requires the services of the Engineer for laying out any portion of the work is required. After the start of construction, the Contractor shall give the Engineer 48 hours' notice, not including Saturday or Sunday, when s/he requires the services of the Engineer for laying out any portion of the work is required.

#### 5.15 INSPECTORS

Inspectors may be appointed by the Engineer or Owner subject to approval by the City Engineer to see that the work is performed in accordance with the plans and specifications. Inspector qualifications shall be submitted in writing to the City Engineer.

#### 5.16 EXAMINATION OF COMPLETED WORK

At the request of the Engineer, the Contractor at any time before acceptance of the work shall remove or uncover such portions of the finished work as requested. After examination, the Contractor shall restore said portions of the work to the standard required by the specifications. Should the work thus exposed or examined prove acceptable, the uncovering or removing, and the replacing of the covering or making good of the parts removed shall be paid for as extra work, in accordance with requirements of Section 9.03 of the General Conditions; but should the work so exposed or examined prove unacceptable, the uncovering, removing and replacing shall be at the Contractor's expense.

#### 5.17 OWNER'S RIGHT TO CORRECT DEFICIENCIES

If the Contractor should neglect to execute the work properly or fail to perform any provision of this contract, the Owner after ten days' written notice to the Contractor may, without prejudice to any other remedy, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor.

#### 5.18 TRAFFIC CONTROL AND MAINTENANCE

##### **(A) Maintenance of Traffic**

The Contractor is responsible for maintenance, control, and safeguarding of traffic within and immediately abutting the project as further outlined herein, and as may otherwise be provided in the Special Provisions. The Contractor is responsible for maintenance, control, and safeguarding of traffic on all detours. The Owner reserves the right to select any detour routes and will coordinate with other governmental agencies.

**(B) Street Closures or Partial Closures**

Streets may be closed to through traffic but shall not be closed to traffic until such closure has been approved by the Owner. Street closures shall be made in such a manner as to provide for maximum public safety and public convenience. They shall be opened to through traffic at such times as the work has been completed, or as the Owner may direct.

**(C) Existing Traffic Signs and Facilities**

The Contractor will make all necessary adjustments to traffic signals and traffic signal activators at no cost to the Owner. Existing traffic and street name signs which will interfere with construction will be removed by the Contractor as required by the construction schedule. Upon completion of the project, the Contractor shall reset all such signs.

**(D) Detours & Haul Routes**

Contractors shall plan haul routes utilizing State Trunk Highways and County State Aid Highways. Any requests to use City streets as haul routes shall be made in writing to the Engineer. The Engineer shall have the final decision to approve or disapprove haul route requests and impose road damage penalties as necessary.

**(E) Local and Emergency Traffic**

Local traffic shall be provided access to private properties at the end of each day, except during some urgent stages of construction when it is impracticable to carry on the construction and maintain access simultaneously, such as for the placing of bituminous pavement, placing and curing of Portland cement concrete, and utility excavations which prohibit safe travel of vehicular traffic. Emergency traffic such as police, fire and disaster units shall be provided reasonable access at all times.

The Contractor shall notify the Owner 48 hours prior to proposed partial blockage or closure of any street or public right of way and shall place all necessary warning signs and provide all necessary flaggers. The Contractor shall notify the police/fire department 48 hours prior to the proposed blockage or closure of any street or public right of way.

**(F) Protection of Pedestrian and Vehicular Traffic**

The Contractor shall take every precaution to protect pedestrian and vehicular traffic.

**(G) Restriction of Parking**

Where parking is a hazard to through traffic or to the construction work, it shall be restricted either entirely or during the time when it creates a hazard. Signs for this purpose will be furnished and placed by the Contractor. The Contractor shall be responsible for and shall maintain the signs if they are used on any street which is directly involved in the construction work. If the no parking signs are to be used beyond the confines of the work area, such as another street being used as a detour, the signs will be the responsibility of the Contractor.

**(H) Flaggers**

The Contractor shall furnish at his/her own expense all flaggers.

**(I) Violations**



In the event the Contractor performing work violates any part this Section, the Contractor will be provided written notice to remediate the violation. If after a reasonable amount of time, which will be outlined in the written notice, has passed with no correction, the Contractor shall be charged an administrative penalty of \$500.00 per day. If the violation is not remediated within 72-hours, all work associated with the violation must cease at once until traffic control is erected, inspected, and approved by the City Engineer.

#### 5.19 TRAFFIC CONTROL WITHIN AND ABUTTING THE PROJECT

The Contractor shall place and maintain all signs, barricades and warning lights within the limits of the project on all streets, alleys and driveways entering the project so that approaching traffic will turn right or left on existing undisturbed streets before reaching the warning signs and barriers immediately abutting the project.

Barricades shall be furnished by the Contractor. The Contractor shall assume responsibility for signs and traffic control devices beyond the limits herein before described.

#### 5.20 REMOVAL OF CONSTRUCTION EQUIPMENT, TOOLS AND SUPPLIES

At the termination of this contract, before acceptance of the work by the Owner, the Contractor shall remove all equipment, tools and supplies from the property of the Owner. Should the Contractor fail to remove such equipment, tools and supplies, the Owner shall have the right to remove them.

#### 5.21 SUSPENSION OF WORK BY ENGINEER

When, in the judgment of the Engineer, unfavorable weather or any other condition makes it impractical to perform work in accordance with the contract, or should the Contractor fail to comply with the provisions of the contract or the requirements of the specifications, the Engineer may issue to the Contractor a written order to immediately suspend work and upon receipt of such notice, on that part of the contract work specified in said written order. When conditions are again favorable for prosecution of the work, the Engineer will issue to the Contractor a written order to resume the suspended work. Orders to suspend work will not be written for intermittent shutdowns due to weather conditions unless the suspension of work is to be for a period of time exceeding five working days. The Contractor shall be responsible for preventing any damage or unreasonable deterioration of the work during the time it is closed down.

Suspension of the work by the Engineer is not grounds for claims by the Contractor for damages or extra compensation.

Inspectors shall have authority to suspend all or a portion of the work which is not being properly performed and, subject to the final decision of the Engineer, to condemn and reject defective work and materials.

Inspectors shall have authority to permit deviation from the plans and specifications and to suspend work as required for conformance with the plans and specifications. If requested by the Contractor, the suspension order will be given in writing.

Inspectors shall not act as foremen or perform other duties for the Contractor.

#### 5.22 SUSPENSION OF WORK BY OWNER

The Owner may at any time suspend the work, or any part thereof, by giving ten days' notice to the Contractor in writing. This work shall be resumed by the Contractor within ten days after the date fixed in a supplemental written notice from the Owner to the Contractor to do so.

If the work, or any part thereof, shall be stopped by the notice in writing aforesaid, and if the Owner does not give a supplemental notice in writing to the Contractor to resume work at a date within a year of the date fixed in the written notice to suspend, then the Contractor may abandon that portion of the work so suspended, and s/he will be entitled to the estimates and payments for all work done on the portions so abandoned, if any.

If suspension of all or part of the work, which is subsequently resumed, causes additional expenses not due to the fault or negligence of the Contractor, the Owner shall reimburse the Contractor for additional expense incurred due to suspension of the work. Claims for such compensation, with complete substantiating records, shall be filed with the Owner within ten days after the date or order to resume work in order to receive consideration. This paragraph shall not be construed as entitling the Contractor to compensation for delays due to inclement weather, failure to furnish additional surety or sureties specified herein, for supervision made at the request of the Contractor, or for any other delay provided for in the Contract Documents.

## **SECTION 6.00 - CONTROL OF MATERIALS AND WORKMANSHIP**

### **6.01 QUALITY OF EQUIPMENT AND MATERIALS**

In order to establish standards of quality, the Engineer has, in the detailed specifications, referred to certain products by name and catalog number. This procedure is not to be construed as eliminating from competition other products of equal or better quality by other manufacturers where fully suitable in design.

Whenever in these specifications, a material or article is specified by using the specific description or name of proprietary product, or name of a manufacturer or vendor, rather than by using descriptive detail or substance and function, any article which will perform the duties imposed adequately and to the same effectiveness as determined by the Engineer will be acceptable as a substitute in lieu of the material or articles so specified.

Only materials conforming to the requirements of these specifications shall be used in the work. The source of any material shall not be changed at any time without the written approval of the Engineer. The Contractor may be required at any time to furnish a complete statement of the original, composition and manufacturer of any or all materials required in the work, or to submit samples of the same.

Unless otherwise specified, all materials shall be new and both workmanship and material shall be of good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials or tools used in the work.

All materials, supplies and articles furnished shall, whenever so specified, and otherwise wherever practicable, be the standard stock products of recognized reputable manufacturers.

The specifications and certifications for all products, materials and supplies furnished shall be submitted for review prior to the preconstruction conference.

The Contractor shall furnish a complete list of proposed desired substitutions, together with such engineering and catalog data as the Engineer may require. List and information must be submitted prior to submittal of first progress payment estimate.

The Contractor shall abide by the Engineer's judgment when proposed substitute materials or items of equipment are judged to be unacceptable and shall furnish the specified material or item of equipment in such case. All proposals for substitutions shall be submitted in writing by the Contractor and not by individual trades or material suppliers. The Engineer will approve or disapprove proposed substitutions in writing within a reasonable time. No substitute materials shall be used unless so approved in writing.

### **6.02 TESTING**

All testing of materials and workmanship shall be conducted by a reputable and qualified firm totally independent of the contractor and owner.

### 6.03 USE OF PREMISES

The Contractor shall confine equipment, storage of materials and operation of work to the limits indicated by law, ordinances, permits, easements or direction of the Engineer, and shall not unreasonably encumber the premises with said equipment and materials.

### 6.04 STORAGE OF MATERIALS

Materials shall be stored so as to insure the preservation of their quality and fitness for the work and such materials, even though approved before storage, shall be subject to testing and must meet the requirement of these specifications at the time it is proposed to use them in the work. Materials shall be stored per the manufacturer's recommendations in a safe manner that will facilitate inspection and be in compliance with all applicable permits and regulations. The portion of the right of way not required for public travel may, with the consent of the Engineer, be used for storage purposes and for the placing of the Contractor's plant and equipment; but any additional space required; unless otherwise stipulated, shall be provided by the Contractor at no cost to the owner.

From the commencement of the work until the completion of the same, the Contractor shall be solely responsible for the care of the work covered by this contract and for the materials delivered at the site intended to be used in the work and all injury or damage to the same from whatever cause, shall be made good at the Contractor's expense before the final estimate is made. The Contractor shall provide suitable means of protection for and shall protect all material intended to be used in the work and all work in progress as well as completed work. All necessary precautions shall be taken to prevent injury or damage to work in progress of construction by flood, freezing or from inclemency's of the weather at any and all times and only approved methods shall be used for this purpose.

### 6.05 MANUFACTURER'S DIRECTIONS

Manufactured articles, material and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer unless herein specified to the contrary.

### 6.06 REJECTED WORK AND MATERIALS

All materials which do not conform to the requirements of the Contract Documents are not equal to samples approved by the Engineer, or are in any way unsatisfactory or unsuited to the purpose for which they are intended, shall be rejected and shall be removed immediately from the Project, unless otherwise permitted. No materials which have been rejected - the defects on which have been corrected or removed - shall be used until approval has been given. If the Contractor does not remove such condemned work and materials within a reasonable time fixed by written notice, the Owner may remove them and may store the materials at the expense of the Contractor. If the Contractor does not pay the expense of such removal within ten days thereafter, the Owner may, upon ten days' written notice, sell such materials at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs and expenses that should have been borne by the Contractor.

The Contractor shall promptly remove from the premises all materials condemned by the Engineer as failing to conform to the contract, whether incorporated in the work or not and the Contractor shall promptly replace and re-execute the work in accordance with the Contract Documents without expense to the Owner and shall bear the expense of making good all work of the other contractors destroyed or damaged by such removal or replacement.

Work done contrary to or regardless of the instructions of the Engineer, work done without lines, grade or cross stakes and grades shown on the plans or as given by the Engineer, or any deviation made from the plans and specifications without written authority will be considered unauthorized and at the expense of the Contractor and will not be measured or paid for by the Owner. Any and all work so done may be ordered removed and replaced immediately at the Contractor's expense.

#### 6.07 MATERIALS FURNISHED BY THE OWNER

Materials specifically indicated will be furnished by the Owner. The fact that the Owner is to furnish material is conclusive evidence of its acceptability for the purpose intended and the Contractor may continue to use it until otherwise directed. The Contractor shall notify the Engineer upon discovering any defect in materials furnished by the Owner. Materials furnished by the Owner, which are not of local occurrence, will be provided at locations listed on plans or in specifications. After receipt of the material the Contractor shall be responsible for material loss or damage, including that caused by third parties.

#### 6.08 MATERIALS FURNISHED BY THE CONTRACTOR

All materials used in the work shall meet the requirements of the respective plans and specifications. All materials not otherwise specifically indicated shall be furnished by the Contractor.

#### 6.09 UNACCEPTABLE WORK & MATERIALS

The Owner will consider all Work and Materials that do not meet the Contract requirements, or do not meet generally accepted industry standards if the Contract does not provide specific standards, to be unacceptable.

For unacceptable Work resulting from poor workmanship, use of nonconforming Materials, damage through carelessness, or any other cause existing before final acceptance of the Work, the Owner will take one of the following actions, at the Engineer's sole discretion:

- (1) Require the Contractor to acceptably correct the Work and Materials, immediately upon receipt of written order to do so
- (2) Allow the Work to remain in place and apply a monetary deduction to the Contract Unit Price
- (3) Decide the extent of acceptance for the Work to remain in place if a Contract Item fails to meet Contract requirements but is adequate to serve the design purpose, and document the basis of acceptance by Change Order to adjust the Contract Unit Price; the adjusted Contract Unit Price will be determined at the Engineer's sole discretion

- (4) Require the Contractor to remove and replace the unacceptable Work at the Engineer's sole discretion

The Owner may provide notice of default after the Contractor has been given proper notice to acceptably correct the Work and Materials, and has failed to do so.

The Contractor shall remove and replace the unacceptable Work, or correct the Work, at no additional cost to the Owner if a Contract Item does not meet specified requirements and results in Work that does not serve the design purpose.

**SECTION 7.00 - LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC**

7.01 COMPREHENSIVE GENERAL LIABILITY

Contractor shall obtain the following minimum insurance coverage and maintain it at all times throughout the life of the Contract, with the City included as an additional name insured on a primary and non-contributory basis. The Contractor shall furnish the City a certificate of insurance satisfactory to the City evidencing the required coverage:

Bodily Injury: \$2,000,000 each occurrence  
\$2,000,000 aggregate products and completed operations

Property Damage: \$2,000,000 each occurrence  
\$2,000,000 aggregate Contractual Liability (identifying the contract):  
Bodily Injury: \$2,000,000 each occurrence

Property Damage: \$2,000,000 each occurrence  
\$2,000,000 aggregate

Personal Injury, with Employment Exclusion deleted:  
\$2,000,000 aggregate Comprehensive Automobile Liability (owned, non-owned, hired):  
Bodily Injury: \$2,000,000 each occurrence  
\$2,000,000 each accident

Property Damage: \$2,000,000 each occurrence

7.02 CONSTRUCTION DAYS AND HOURS

Construction hours, including pick-up and deliveries of material and equipment and the operation of any internal combustion engine, may only occur from 7:00 a.m. to 6:00 p.m. on weekdays, from 9:00 a.m. to 5:00 p.m. on Saturdays with no such activity allowed on Sundays or on legal holidays. In addition to the aforementioned construction hours, on October 31<sup>st</sup> operations must cease by 3:00 p.m. (no construction activities are allowed on Sundays). Contractors must require their subcontractors, agents and supplies to comply with these requirements and the Contractor is responsible for their failure to do so. Under emergency conditions, this limitation may be waived by the written consent of the City Engineer. If construction occurs outside of the permitted construction hours, the Contractor shall pay the following administrative penalties:

First Violation	Written Warning
Second Violation	\$ 500.00
Third and Subsequent Violations	\$1,000.00

The Contractor expressly agrees to be responsible for, and to pay the Owner for the Inspector's hours and expenses for all inspection work required past the daily working hours, on weekends and legal holidays. The hourly rates will be in conformance with Engineer's current fee schedule. Overtime work is 1.5 times the hourly rate. Payment to the owner shall be made by deductions to the contractor's progress or final payments.

### 7.03 DRUG AND ALCOHOL TESTING

All contractors and their subcontractors shall provide the City, prior to conducting any work, written verification of compliance with the Federal Highway Administration (FHWA) drug use and alcohol testing rules published February 15, 1994, which apply to persons required to have a commercial driver's license (CDL).

### 7.04 WATER

The Contractor shall make all arrangements with the City's Public Works Department for obtaining any water which may be needed for the construction. No water may be taken from any City hydrants unless authorized in writing by the City. Failure to obtain City authorization will result in prosecution and fines within the limits of city ordinance.

### 7.05 NOISE ELIMINATION

The Contractor shall eliminate noise to as great an extent as possible at all times. Air compressing plants shall be equipped with silencers and the exhausts of all gasoline motors or other power equipment shall be provided with mufflers.

### 7.06 PATENTS

All fees or royalties for patented invention, equipment, or arrangements that may be used in any manner connected with the construction or erection of the work, or any part thereof, shall be included in the price mentioned in the contract.

### 7.07 PRIVILEGES OF CONTRACTOR IN STREETS, RIGHTS-OF-WAY AND EASEMENTS

For the performance of the contract, the Contractor will be permitted to occupy such portions of streets or alleys, or other public places, or other rights-of-way, as shown on the plans or as permitted by the Engineer. A reasonable amount of tools, materials and equipment for construction purposes may be stored in such space, but not more than is necessary to avoid delays in construction. Excavated and waste materials shall be piled or stacked in such a way as not to interfere with spaces that may be designated to be left free and unobstructed, nor inconvenience occupants of adjoining property. Other Contractors of the Owner may, for all purposes required by their contracts, enter upon the work and premises used by the Contractor, and the Contractor shall give to other Contractors of the Owner all reasonable facilities and assistance for the completion of adjoining work. Any additional ground desired by the Contractor for sole use shall be acquired by the Contractor at no cost to the Owner. Also, all maintenance and restoration costs shall be the responsibility of the Contractor.

Where the work encroaches upon any right of way of any railway or state or county highway, the Owner shall apply for the necessary permits and the Contractor shall secure, pay the cost of all fees and provide bonds as required at no additional compensation. Where railway tracks or such highway are to be crossed, the Contractor shall observe all the regulations and instructions of the railway company and highway department as to methods of doing the work, or precautions for safety of



property and the public. All negotiations with the railway company and highway department, except the right-of-way, shall be made by the Contractor at no cost to the Owner. The Contractor will not be paid direct compensation for such railway or highway crossing, unless so provided in the Special Provisions and Proposal.

#### 7.08 DISCRIMINATION ON ACCOUNT OF RACE, CREED, OR COLOR

The Contractor agrees that the provisions of State Statutes are as much a part of this contract as if fully set forth herein.

#### 7.09 SAFETY

Precautions shall be exercised at all times by the Contractor for the protection of persons, employees and property. The safety provisions of applicable laws and local building and construction codes shall be observed.

The Contractor is solely responsible for the safety, proper construction and protection of the entire work until the same has been finally accepted and paid for by the Owner. The Contractor is responsible for conducting all work in compliance with the requirements of applicable state and federal laws, and the rules and regulations of such governmental agencies having jurisdiction over such operations.

The Contractor shall be solely responsible for providing and maintaining at no additional cost to the Owner and on a 24-hour basis, all necessary safeguards such as temporary ladders, guard rails, protective fencing, shoring, bracing, dewatering, watchpersons, warning signs or signals, barricades and night lights at all unsafe places at or near the work. Provisions shall be made to prevent vehicles, pedestrians, and livestock from falling into open trenches or being otherwise harmed as a result of the work.

Excavation in or adjacent to public streets or alleys in which water stands more than one foot deep shall be securely barricaded with snow fence so as to prevent access by small children at all times work is not being carried on at the site of excavation. Barricades shall be painted in a color that will be visible at night. From sunset to sunrise, the Contractor shall furnish and maintain at least two lights at each barricade. A sufficient number of barricades shall be erected to keep vehicles from being driven on or into any work under construction. The Contractor shall furnish watchpersons in sufficient numbers to protect the work. The Contractor shall in all cases maintain safe passageways at all road crossings, crosswalks and street intersections, and shall do all other things necessary to prevent accident or loss of any kind.

#### 7.10 SANITARY PROVISIONS

The Contractor shall provide and maintain in a neat and sanitary condition such accommodations for the use of employees as may be necessary to comply with the requirements and regulations of the governmental agency having jurisdiction there over. No public nuisance shall be permitted.

Suitable sanitary conveniences for the use of all persons employed on the work, properly screened from public observation, shall be provided and maintained by the

Contractor.

#### 7.11 RAILROAD CROSSINGS

Wherever a project is being constructed beneath, at grade or above railroad track, it shall be the Contractor's responsibility to contact the railroad company prior to constructing such crossings and to proceed with the construction as approved by the railroad company. The Contractor shall comply with all construction and additional insurance requirements of the railroad company. The Contractor shall hold the Owner and Engineer harmless from any and all damages resulting from operations in the construction at such crossings.

#### 7.12 USE OF EXPLOSIVES

Blasting will not be permitted in any case without specific authorization by the Owner, and then only under such restrictions as may be required by the proper authorities.

If it is necessary to use explosives in the performance of the work, the Contractor shall take out permits and comply with all the laws, ordinances and regulations governing same. The Contractor shall fully protect all completed works as well as all overhead, surface or underground structures and shall be liable for any damage done to the work or to other structures on public or private property and injuries sustained by persons, by reason of the use of explosives in the operations. Explosives shall be handled, used and fired only by qualified people. All firing shall be done by electricity. All explosive supplies shall be safely stored and protected in an approved manner. All such storage places shall be marked clearly "DANGEROUS EXPLOSIVES". Caps or other exploders shall not be stored at the place where dynamite or other explosives are stored.

#### 7.13 PRIVATE PROPERTY

The Contractor shall not enter upon private property for any purpose without having previously obtained written permission from the property owner. The Contractor shall be responsible for the preservation of, and shall use every precaution to prevent damage to all trees, shrubbery, plants, lawns, sprinkler systems, fences, culverts, bridges, pavements, driveways, sidewalks, etc.; all water, sewer and gas lines; all conduits; all overhead pole lines or appurtenances thereof; and all other public or private property along or adjacent to the work.

Access to private property shall be maintained/provided after 5:00 PM. Temporary mailboxes must be installed when the Contractor anticipates or the plans show as such. The Contractor must furnish, install, and remove temporary mailboxes. Temporary mailbox locations must be approved by the Engineer.

#### 7.14 RIGHT TO USE IMPROVEMENT

The Owner shall have the right to open to traffic or public use any portion of this improvement prior to the final completion of the whole work, but the use of any part or portion of this improvement by the Owner, by the public, or by any person or party, shall not be construed as acceptance of any portion of the work prior to the time of final completion and acceptance of the entire improvement.

## 7.15 CONTRACTOR'S RESPONSIBILITIES

The Contractor shall furnish all necessary machinery, tools, labor and material for every character required, and shall fully complete the work in accordance with the plan, specifications, and detail drawings, for the prices bid. The Contractor shall perform the entire work under the contract and assume the responsibility for and risk of all damages to the work or to property adjacent to or on the line of said work. The Contractor shall have charge of and be responsible for the entire project until its completion and acceptance. This includes the responsibility to maintain all stages of work in a safe and suitable condition at all times, including nights, weekends, and holidays. The Contractor shall make observations of the work during such periods as are necessary to insure proper care of the work. The Contractor is liable for any defects which may appear or be discovered before the final payment herein specified.

The Contractor shall designate one person who shall have charge of the job and to whom the inspector may communicate. Whenever the Contractor is not present on the work, communications will be given to the superintendent or foreman in immediate charge of the work. Communications received shall be strictly obeyed.

The Contractor shall be knowledgeable of and comply with the requirements of all pertinent permits and programs including, but not limited to, General Permit Authorization to Discharge Stormwater Associated With Construction Activity Under the National Pollution Discharge Elimination System, other provisions of the Clean Water Act, MN Rules Chapters 7001 and 7090, MN Wetland Conservation Act, DNR Public Waters Program, and others.

The Contractor shall submit, at such times as may reasonably be requested by the Engineer, schedules which shall show the order in which the Contractor proposes to carry on the work, with dates at which the Contractor will start the several parts of the work, and estimated dates of completion of the several parts.

In accordance with the contract agreement, the Contractor and associated sureties shall indemnify the Owner and any and all of its officers, Engineers, and employees from any claims and demands or losses, damages, costs, charges and expenses of every nature and description, whether direct or indirect, because of the performance of this contract, including all injuries to workers or persons other than workers and for all property damages. The Contractor shall indemnify the Owner against any such loss or any liability of any nature, whether direct or indirect, and the Owner reserves the right to deduct from any money due the Contractor the amount of any judgment or claims therefore.

The obligations of the Contractor do not extend to the liability of the consultant or Engineer, the consultant's agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications which are certified by the Engineer. The approval of the above documents by the Engineer shall be subject to the conditions, limitations and exceptions stated on such documents and in contract documents. No approval of any document by the Engineer shall be implied. The Engineer shall not be deemed to have approved any document unless such document bears the Engineer's certificate or seal.

#### 7.16 LANDS BY OWNER

Where the work passes over or through private property, the Owner will secure right of way or easement. The Contractor shall not receive any extra compensation or be entitled to any extra payment because of delay on the part of the Owner in obtaining right of way or easement.

#### 7.17 LANDS BY CONTRACTOR

Any additional land and access thereto that may be required for temporary construction facilities or for storage of materials shall be provided by the Contractor with no liability to the Owner. The Contractor shall confine equipment and storage of materials and activities of workers to those areas described in the plans and specifications and such additional areas which may be provided as approved by the Engineer.

## **SECTION 8.00 - PROSECUTION AND PROGRESS**

### **8.01 SUBCONTRACTS**

At the time specified by the Contract Documents or when requested by the Engineer, the Contractor shall submit-in writing to the Owner for approval the names of the subcontractors proposed for the work. Subcontractors may not be changed except at the request of and with the approval of the Owner. The Contractor is responsible to the Owner for the acts and omissions of all employees and subcontractors hired by the Contractor. The Contract documents shall not be construed as creating any contractual relation between any subcontractor and the Owner.

The Contractor agrees to bind every subcontractor and every subcontractor agrees to be bound by the terms of the Contract Documents as far as applicable to the subcontractor's portion of the work; including the following provisions of this section.

The Contractor agrees to be bound to the subcontractor by all the obligations that the Owner assumes to the Contractor under the terms of said documents, and by all the provisions thereof affording remedies and redress to the Contractor from the Owner.

The Contractor shall not assign, sublet, subcontract or transfer more than 50% of the total contract cost excluding "specialty items" without the written consent of the Owner. Any such assignment, subletting, or transfer shall not in any way relieve the Contractor of the responsibilities assumed under the contract, bonds, and guaranty.

For convenience of reference and to facilitate the letting of contracts and subcontracts, the specifications are separated into title sections. Such separations shall not, however, operate to make the Engineer an arbiter to establish limits to the contracts between Contractor and subcontractor.

### **8.02 CONTRACTOR'S SUPERINTENDENT**

A qualified superintendent shall be in control of the work at all times and give efficient supervision to the work until its completion. The superintendent shall have full authority to act in behalf of the Contractor, and all directions given to the superintendent shall be considered given to the Contractor. The Engineer's instructions may be confirmed in writing and shall be so confirmed upon written request of the Contractor.z

### **8.03 CONTRACTOR'S EMPLOYEES**

Incompetent or incorrigible employees shall be dismissed from the project by the Contractor or his/her representative when requested by the Engineer, and such persons shall not again be permitted to return to the project without the written consent of the Engineer.

The foreman or other persons directing the work shall be competent, sober, and reliable, and shall extend every facility to the Engineer to enable to proper execution of the Engineer's duties, and shall furnish such help as may be necessary to facilitate the inspection of materials.

#### 8.04 INJUNCTIONS

If by reason of any court proceedings, instituted by any third party or by the Owner affecting, directly or indirectly, the construction or completion of any portion or portions of this improvement, the Contractor or the Owner shall be unable to construct or complete any other portion or portions thereof, the Contractor shall, and does hereby waive any and all claims for damages because of such inability to complete the improvement as completed and file the final estimate thereon as provided for in the full completion of other improvements in the Owner, and the Contractor shall accept in full payment of the work upon said improvement, and as a cancellation of the contract thereof, a sum of money determined in strict accordance with the Contractor's proposal for the contract, on the basis of the work actually completed up to the time of stopping thereof.

#### 8.05 RIGHTS OF VARIOUS INTEREST

Wherever work being done by the Owner's forces or by other Contractors is contiguous to work covered by this contract, the respective rights of the various interests involved shall be established by the Engineer, to secure the completion of the various portions of the work in general harmony.

#### 8.06 WORK DURING AN EMERGENCY

The Contractor shall perform any work and shall furnish and install any materials and equipment necessary during an emergency endangering life or property. In all cases, the Contractor shall notify the Engineer of the emergency as soon as practicable, but shall not wait for instructions before proceeding to properly protect both life and property. In cases where the Contractor cannot or does not meet the emergency, the Owner may take appropriate action to protect life and safety.

#### 8.07 DELAYS AND EXTENSION OF CONTRACT TIME

The Contractor herewith specifically waives claims for damages for any hindrance, delay, or change of sequencing. The Contractor will, in lieu thereof, be granted extensions of time for which liquidated damages will not be claimed by the Owner for the following causes: A delay caused the Contractor by any suit or other legal action against the Owner will entitle the Contractor to an equivalent extension of time unless the period of such delay exceeds 90 days.

When such period is exceeded, the Owner will, upon request by the Contractor in writing, either terminate the contract, or grant a further extension of time, whichever as may at that time appear most desirable to both parties.

If the Contractor is delayed at any time in the progress of the work by any act of neglect of the Owner or the Engineer or any employees of either, or by any other Contractor employed by the Owner, or by strike, fire, unusual delay in transportation, unavoidable casualties, or other causes beyond the Contractor's control, or by any cause which, in the opinion of the Engineer, shall justify the delay, then the time of completion shall be extended for such reasonable time as the Engineer may decide. No such extension shall be made for delay occurring more than seven days before claim therefore is made in writing to the Engineer.

Shutdowns due to improper work, or otherwise due the Contractor's operation, are not

cause for extension of time.

If during the term of this contract, the volume of the specified work, measured in dollars, is increased over the total value shown in the Contractor's proposal at the time the award of contract is made, the Contractor will be granted an extension proportionately equal to the increase in the total value. Should unforeseen conditions require the performance under an extra work order, the work more complex or difficult than that originally specified and shown on the plans, and such work, in the Contractor's opinion, requires more time to execute than the proportional increase in dollar value, the Contractor shall state to the Engineer, in writing, prior to the performance of such work, his/her estimate of the added time required for such work.

The Owner will, if such estimate be reasonable, allow an added extension of time equal to the difference between the total time required and the proportional increase in the dollar value of the work.

8.08 CONSTRUCTION SCHEDULE & LIQUIDATED DAMAGES

Contract and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in the Contract, plus any extensions thereof allowed. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner a set charge based off the table below for each calendar day that expires after the time specified in the Contract for Completion until the Work is complete.

Daily costs are based on MnDOT Table 1807.1-1, "Schedule of Liquidated Damages as follows:

TABLE 1807.1-1 SCHEDULE OF LIQUIDATED		
Original Contract Amount		Charge Per Cal. Day
From More Than (\$)	To and Including (\$)	
0	25,000	300
25,000	100,000	400
100,000	500,000	900
500,000	1,000,000	1,200
1,000,000	2,000,000	1,500
2,000,000	5,000,000	2,500
5,000,000	10,000,000	3,000
10,000,000	----	3,500

8.09 OWNER'S RIGHT TO TERMINATE CONTRACT & COMPLETE THE WORK

The Owner has the right to terminate the employment of the Contractor for any of the following reasons:

- A. The Contractor is adjudged bankrupt, makes a general assignment for the benefit of creditors, or becomes insolvent;
- B. Failure of Contractor to supply adequate properly skilled workers or proper materials;
- C. Failure of Contractor to make prompt payment to subcontractor for material or labor;
- D. Persistent and continuing disregard of laws, ordinances, or proper instructions of the Engineer;
- E. Assignment of work without permission of the Owner;
- F. Abandonment of the work by Contractor;
- G. Failure to meet the work progress schedule set forth in the contract;

Termination of the contract shall be preceded by seven days written notice by the Owner to the Contractor and the surety stating the ground for termination and the measures if any which must be taken to assure compliance with the contract. The contract shall be terminated at the expiration of such seven day period unless the Owner shall withdraw its notice of termination.

Upon termination of the contract by the Owner, the Owner may complete the work required by the contract by whatever means deemed expedient, including requiring the Contractor's surety to complete the work.

The taking over of the work by the Owner upon contract termination shall not affect the right of the Owner to recover liquidated damages from the Contractor or the surety for failure to complete contract.

In the event that the Contractor involuntarily abandons the work, fails or refuses to complete the work embodied in the contract or fails to pay just claims for labor or material, the Owner reserves the right to charge against the Contractor all extra legal, engineering, or other costs resulting from such abandonment, failure or refusal. Legal costs will include the Owner's cost of prosecuting or defending any suit in connection with such abandonment, failure or refusal, and nonpayment of claims wherein the Owner is made codefendant, and the Contractor agrees to pay all such costs, including reasonable attorney's fees.

When the Owner assumes control of the work under the contract pursuant to termination, the Owner may take possession of the work and all material, tools, and equipment therein belonging to the Contractor and may use the same to complete the work at Contractor's expense.

Upon contract termination, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price exceeds



the expense of finishing the work, including compensation for additional managerial and administrative services, the excess shall be paid to the Contractor. If such expense exceeds the unpaid balance, the Contractor shall pay the difference to the Owner. The expenses incurred by the Owner as herein provided and the damages incurred through the Contractor's default shall be certified by the Engineer and Owner.

#### 8.10 CONTRACTOR'S RIGHT TO TERMINATE CONTRACT

The Contractor may terminate contract upon ten days' written notice to the Owner and the Engineer for any of the following reasons:

- A. If an order of any court or other public authority caused the work to be stopped or suspended for a period of 90 days through no act of fault of the Contractor or his/her employees;
- B. If the Owner should fail to act upon any request for payment, in the manner set forth in the General Conditions, within 45 days after its approval by the Engineer;
- C. If the Owner should fail to pay the Contractor any sum within 45 days after its award by arbitrators.

## **SECTION 9.00 - MEASUREMENT AND PAYMENT**

### **9.01 MEASUREMENT**

The determination of pay quantities or work performed under this contract will be made by the Engineer based upon the lines, grades, and cross sections given, or measurements made by designated Inspectors. All items will be computed based upon the units in the bid forms.

### **9.02 SCOPE OF PAYMENT**

The Contractor shall accept the compensation, as provided in the contract, in full payment for furnishing all materials, labor, tools and equipment necessary to the completed work and for performing all work contemplated and embraced under the contract; also for loss or damage arising from the nature of the work, or from the action of the elements, or from any unforeseen difficulties which may be encountered during the prosecution of the work until the final acceptance by the Owner, and for all risks of every description connected with the prosecution of the work; also for all expenses incurred in consequence of the suspension or discontinuance of the work as herein specified; and for completing the work according to the plans and specifications.

Neither the payment of any estimate nor of any retained percentage shall relieve the Contractor of any obligation to make good any defective work or material.

The unit contract prices for the various bid items of the contract shall be full compensation for all labor, materials, supplies, equipment, tools and all things of whatsoever nature required for the complete incorporation of the item into the work the same as though the item were to read "In Place", unless the plans and Special Provisions shall provide otherwise.

### **9.03 PAYMENT FOR EXTRA WORK**

Adjustments, if any, in the amounts to be paid the Contractor by reason of any change, addition, or deduction, shall be determined by one or more of the following methods:

- (A) **FOR ITEMS COVERED BY THE PLANS AND SPECIFICATIONS:** The Owner reserves the right to increase or decrease any of the quantities shown. In the event the actual quantities differ more than 25% of the original contract amount, an equitable revision of the unit price shall be made when requested by either the Owner or the Contractor.

This 25 percent (25%) limit does not apply to items specifically excluded or listed as optional by the Owner, or to minor contract items, (items amounting to ten percent or less of the total contract).

- (B) **FOR ITEMS NOT COVERED BY THE PLANS AND SPECIFICATIONS:** If the Engineer orders, in writing, the performance of any work not covered by the plans or included in the specifications, and for which no item in the contract is provided, and for which no unit price or lump sum basis can be agreed upon, then such extra work shall be done on a cost-plus-percentage basis of payment as follows:

1. The Contractor shall be reimbursed for all costs incurred in doing the work and shall receive an additional payment of 5% of all such cost to cover his indirect overhead costs, plus 10% of all cost, including indirect overhead as his/her fee.
2. The term "Cost" shall mean the total sum of the labor, materials and equipment costs as defined in the following.
  - a. LABOR – The Contractor shall be compensated for the actual rate of wages paid and health and welfare benefits documented on the payroll for the actual time spent by the laborers and the foreman in performing the Force Account work. Unless already included in the wage rates paid, the Contractor shall also receive the actual labor-related costs incurred by reason of subsistence and travel allowance, pension funds, or other fringe benefits provided those payments are required through an employment contract or collective bargaining agreement applicable to the classes of labor employed in the work.
  - b. MATERIALS – For all materials accepted by the Engineer and permanently installed in the work, the actual cost of the material (including transportation charges paid by the Contractor) will be paid.
  - c. EQUIPMENT – Rental rates for equipment to be used in the force account work shall be established prior to use of the equipment in the work. The rental rates will be paid for the actual time the machinery and equipment are in operation on the Force Account work.
3. Each day the Contractor's representative and the Engineer shall compare and reconcile the records of labor, materials and equipment used in the Force Account Work.
4. The Contractor shall furnish the Engineer with duplicate itemized statements of the cost for Force Account work, consisting of the following.
  - a. Payroll for laborers and foreman.
  - b. Quantities of materials, prices, extensions and transportation costs paid by the Contractor.

Statements shall be accompanied by paid receipted invoices for materials used, including transportation charges paid by the contractor. If materials used in the Force Account work are not specifically purchased but are taken from the Contractor's stock, an affidavit shall be furnished certifying that the materials were taken from stock, that the quantity claimed was actually used, and that the price and transportation costs claimed are the Contractor's actual costs. After receipt of statements and invoices, the Engineer will prepare a change

order which will be submitted to the Contractor for verification and signature.

5. Monthly payments for force account work will be issued once each month for all work completed to the end of the preceding month. Claims for extra work not ordered in writing by the Engineer will not be allowed.

#### 9.04 PROGRESS PAYMENTS, RETAINED PERCENTAGE

Monthly payment will be issued once each month for all work completed to the end of the preceding month. Progress estimates shall be prepared by the Engineer as accurately as the available information will permit but the only estimate that is binding will be the final estimate. Before the final estimate is prepared, all quantities will be reviewed and rechecked. Progress payments will be made in cash or equivalent. The Owner will retain 5% of the total amount owing the Contractor until 90% or more of the contract has been completed. At that time such portions of the retained percentage will be released in an amount which the Engineer determines is not required to protect the Owner's interest in completion of the contract.

The Contractor may request partial payments for the value of "Materials on hand," defined as acceptable Materials produced for or provided to the Project, but not yet incorporated into the Work. The Owner may pay for Materials on hand in an amount not greater than the delivered cost of the Material as verified by Contractor-provided-invoices and not greater than the Contract Unit Price for the Material complete in place.

The Owner may pay for materials on hand when the Contractor meets the following:

1. Requests payment for at least \$5,000
2. Provides Materials specifically manufactured, produced, or supplied for permanent incorporation into the Project
3. When storage provided by the Contractor is accepted by the Engineer for Materials delivered to, or adjacent to, the Project Site and is in accordance with Section 6.04
4. When the Contractor irrevocably assigns the Materials to the Project, stores the Materials separately from other similar Materials, and ensures the Materials are not available for use on other projects, and makes the Materials available for inspection by the Owner at the Material storage location for Materials not yet delivered to, or adjacent to, the Project Site
5. Provides Materials as shown on the Plans and in accordance with the Specifications

The Contractor must also provide the following actual, authentic, customary, and auditable documents, produced in the normal course of business, to receive payment for Materials on hand:

6. Paid invoices or receipts for delivery of Materials
7. An itemized list detailing the cost of Contractor-produced Material
8. Documents containing complete Material description and identification

Such materials when so paid for by the Owner shall become the property of the Owner, and in the event of the default on the part of the Contractor, the Owner may

use or cause to be used such materials in construction of the work provided for in the contract. The amount paid by the Owner for materials shall reduce estimates due the Contractor as the material is used in the work. The Owner will not make partial payments for living plant or perishable Materials as Materials on hand.

The Owner may withhold, in addition to retained percentages, from payment to the Contractor such an amount or amounts as may be necessary to cover:

- A. Defective work not remedied;
- B. Claims for labor or materials furnished the Contractor or subcontractor, or reasonable evidence indicating probable filing of such claims;
- C. Failure of the Contractor to make payments properly to subcontractors or for material or labor;
- D. Amounts necessary to insure that an overpayment on the total contract amount will not occur;
- E. Evidence of damage to another contractor or private property.

The Owner may disburse and shall have the right to act as agent for the Contractor in disbursing such funds as have been withheld pursuant to this paragraph to the party or parties who are entitled to payment therefrom but the Owner assumes no obligation to make such disbursement. The Owner will render to the Contractor a proper accounting of all such funds disbursed.

#### 9.05 ENGINEER'S ACTION ON REQUEST FOR PAYMENT

Within ten days of submission of any request for payment by the Contractor, the Engineer shall:

- A. Approve the request for payment as submitted; or
- B. Approve such other amount as the Engineer shall decide is due the Contractor, informing the Contractor in writing of the reasons for approving the amended amount; or
- C. Withhold the request for payment, informing the Contractor in writing of the reasons for withholding it.

#### 9.06 OWNER'S ACTION ON AN APPROVED REQUEST FOR PAYMENT

Within 30 days from the date of approval of a request for payment by the Engineer, the Owner shall:

- A. Pay the request for payment as approved; or
- B. Pay such other amount as the Owner shall decide is due the Contractor, informing the Contractor and the Engineer in writing of the reasons for paying the amended amount; or
- C. Withhold payment informing the Contractor and the Engineer of the reasons for withholding

payment.

#### 9.07 PAYMENT FOR WORK BY THE OWNER

The cost of the work performed by the Owner in removing construction equipment, tools and supplies and correcting deficiencies in accordance with the General Conditions shall be paid by the Contractor.

#### 9.08 PAYMENT FOR UNCORRECTED WORK

Should the Engineer direct the Contractor not to correct work that has been damaged or that was not performed in accordance with the contract documents, an equitable deduction from the contract amount shall be made to compensate the Owner for the uncorrected work.

#### 9.09 PAYMENT FOR REJECTED WORK AND MATERIALS

The removal of work and materials rejected and the re-execution of acceptable work by the Contractor shall be at the expense of the Contractor. The Contractor shall pay the cost of replacing the work of other contractors destroyed or damaged by the removal of the rejected work or materials and the subsequent replacement of acceptable work.

Removal of the rejected work or materials and storage of materials by the Owner in accordance with the General Conditions shall be paid by the Contractor within 30 days after written notice to pay is given by the Owner. If the Contractor does not pay the expenses of such removal and after ten day's written notice being given of the Owner's intent to sell the materials, the Owner may sell the materials at auction or at private sale and shall pay to the Contractor the net proceeds therefrom after deducting all the costs and expenses that should have been borne by the Contractor.

#### 9.10 PAYMENT FOR WORK SUSPENDED BY THE OWNER

If the work or any part thereof shall be suspended by the Owner and abandoned by the Contractor as provided in the General Conditions, the Contractor will then be entitled to payment for all work performed on the portions so abandoned and nothing additional for the uncompleted portion of the work such as overhead, expenses, and anticipated profit.

#### 9.11 PAYMENT FOR WORK FOLLOWING OWNER'S TERMINATION OF THE CONTRACT

Upon termination of the contract by the Owner no further payments shall be due the Contractor until the work is completed. If the unpaid balance of the contract amount shall exceed the cost of completing the work including all overhead costs, the excess shall exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The cost incurred by the Owner as herein provided, and the damage incurred through the Contractor's default, shall be certified by the Owner and approved by the Engineer.

#### 9.12 PAYMENT FOR WORK TERMINATED BY THE CONTRACTOR

Upon termination of the contract by the Contractor, the Contractor shall recover payment from the Owner for work performed.

#### 9.13 RELEASE OF LIENS

Before final payment is made to the Contractor for the work, the Contractor shall deliver to the Owner a complete release of all liens arising out of this contract or in receipt in full in lieu thereof and in either case, an affidavit that the releases and receipt include all the labor and material for which a lien could be filed; but the Contractor may, if any subcontractor refuses to furnish a release, a lien or receipt in full, furnish a bond satisfactory to the Owner which will indemnify the Owner against any lien.

If any lien remains unsatisfied after all payments are made to the Contractor, the Contractor shall refund to the Owner all money that the latter may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.

#### 9.14 ACCEPTANCE AND FINAL PAYMENT

When the Contractor shall have completed the work in accordance with the terms of the contract documents, the Engineer shall certify acceptance to the Owner and approval of the Contractor's final request for payment, which shall be the contract amount minus previous payments made. The Contractor shall furnish a two-year maintenance bond and a notarized certificate that all debts for labor, materials, and equipment incurred in connection with the work, have been fully paid, following which the Owner shall accept the work and release the Contractor except as to the conditions of the Maintenance Bond and legal rights of the Owner, requiring guaranties, and correction of faulty work after final payment, and shall authorize payment of the Contractor's final request for payment. The Contractor must allow sufficient time between time of completion of the work and approval of the final request for payment for the Engineer to assemble and check the necessary data.

The approval of a request for a final progress payment by the Engineer and the making of a final or progress payment to the Contractor does not relieve the Contractor of responsibility for faulty material or workmanship and the Owner by such payment does not waive any claims of overpayment resulting from mathematical error, unauthorized work, or from any other cause. Final payment will not be made until the Contractor furnishes a certificate showing compliance with State Statutes requiring withholding of State Income Taxes.

#### 9.15 TERMINATION OF CONTRACTOR'S RESPONSIBILITY

The contract will be considered complete when all work has been finished, the final inspection made by the Engineer, and the project accepted in writing by the Owner. The Contractor's responsibility shall then cease, except as set forth in the maintenance bond, as required by the guaranty period.

#### 9.16 CORRECTION OF FAULTY WORK AFTER FINAL PAYMENT

The Contractor shall be held responsible for any and all defects in workmanship and materials which may develop in any part of the entire installation furnished by the Contractor. Upon written notice by the Engineer the Contractor shall immediately replace and make good without expense to the Owner any such faulty part of the parts and damage done by reason of same, during the guarantee period of two years, or as specified, from the date of final payment approval or the installation of all work.

Should the Contractor fail to make good the defective parts within a period of 30 days of such notification, after written notice has been given, the Owner may replace these parts, charging the expense of same to the Contractor.

#### 9.17 FAILURE TO PAY FOR LABOR AND MATERIALS

Pursuant to Minn. Stat. § 471.425, Subd. 4a, the contractor must pay any subcontractor within ten (10) days of the contractor's receipt of payment from the City for undisputed services provided by the subcontractor. The contractor must pay interest of 1½ percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, the contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from the contractor shall be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

If, at any time, the Contractor fails to pay the subcontractor or the laborers employed upon the work, or fails to pay for the material used herein, the Owner may withhold from the money which may be due the Contractor under this agreement such amount or amounts as may be necessary for the payment of the subcontractors, laborers, or materials, and may, acting as agent for the Contractor, apply the same to such payments and deduct the same from the final estimate of the Contractor.

#### 9.18 CONTRACT DOCUMENTS:



## **INFORMATION FOR BIDDERS**

1. COPIES OF BIDDING DOCUMENTS.

- 1.1 Complete sets of the Bidding Documents in the number and for the deposit sum stated in the Advertisement for Bids may be obtained from \_\_\_\_\_.
- 1.2 Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 1.3 Owner and Engineer in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bids on the work and do not confer a license or grant for any other use.

2. QUALIFICATIONS OF BIDDERS. To demonstrate qualifications to perform the work, each Bidder must be prepared to submit within five days of Owner's request written evidence of financial data, and previous experience. Each Bid must contain evidence of Bidder's qualification to do business in the State where the Project is located, or covenant to obtain such qualification prior to award of the Contract.

3. EXAMINATION OF CONTRACT DOCUMENTS AND SITE.

- 3.1 Before submitting a Bid, each Bidder must (a) examine the Contract Documents thoroughly, (b) visit the site to familiarize himself/herself with local conditions that may in any manner affect cost, progress or performance of the work, (c) familiarize himself/herself with Federal, State, and Local laws, ordinances, rules, and regulations that may in any manner affect cost, progress or performance of the work, and (d) study and carefully correlate Bidder's observations with the Contract Documents.
- 3.2 Reference is made to the Special Provisions for the identification of those reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the work which have been relied upon by Engineer in preparing the Drawings and Specifications. Copies of such reports are bound with the Specifications. These reports are not guaranteed as to accuracy or completeness, nor are they a part of the Contract Documents. Before submitting his/her Bid, each Bidder will, at his/her own expense, make such additional investigations and tests as the Bidder may deem necessary to determine his/her Bid for performance of the work in accordance with the time, price, and other terms and conditions of the Contract Documents.
- 3.3 On request, Owner will provide each Bidder access to the site to conduct such investigations and tests as each Bidder deems necessary for submission of his/her Bid.
- 3.4 The submission of a Bid will constitute an incontrovertible representation by the Bidder that he/she has complied with every requirement of this Article 3 and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the work.

4. INTERPRETATIONS. All questions about the meaning or intent of the Contract Documents shall be submitted to Engineer in writing. Replies will be issued by Addenda mailed or delivered to all parties recorded by Engineer as having received the Bidding Documents. Questions received less than four days prior to the date for opening of Bids will not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

5. BID SECURITY.

- 5.1 Bid security shall be made payable to the Owner, in an amount as stated in the Advertisement

for Bids of the Bidder's maximum Bid price, and in the form of a certified or bank check or a Bid Bond, issued by a Surety, meeting the requirements of paragraph 2.06 of the General Conditions.

- 5.2 The Bid Security of the three lowest Bidders will be retained until the successful Bidder has executed the Agreement and furnished the required Contract Security, whereupon it will be returned; if the successful Bidder fails to execute and deliver the Agreement and furnish the required Contract Security within 15 days of the Notice of Award. Owner may annul the Notice of Award and the Bid Security of that Bidder will be forfeited. The Bid Security of any Bidder whom Owner believes to have a reasonable chance of receiving the award (generally the second and third low Bidder) may be retained by the Owner until the earlier of the seventh day after the "effective date of the Agreement" (which term is defined in the General Conditions) by Owner to Contractor and the required Contract Security is furnished or the sixty-first day after the Bid opening. Bid security of other Bidders will be returned within seven days of the Bid opening.
6. CONTRACT TIME. The number of days within which, or the date by which, the work is to be completed (the Contract time) is set forth in the Bid Form and will be included in the Special Provisions.
7. LIQUIDATED DAMAGES. Provisions for liquidated damages are set forth in the General Conditions, Paragraph 8.08.
8. SUBCONTRACTORS, ETC.
- 8.1 If the Bid Proposal or Special Provisions require the identity of certain subcontractors and other persons and organizations to be submitted to Owner in advance of the Notice of Award, the apparent Successful Bidder, and any other Bidder so requests, will within seven days after the day of the Bid Opening submit to Owner a list of all subcontractors and other persons and organizations (including those who are to furnish the principal items of material and equipment) proposed for those portions of the work as to which such identification is so required. Such list shall be accompanied by an experience statement with pertinent information as to similar projects and other evidence of qualification of each such subcontractor, person and organization if requested by Owner. If Owner or Engineer after due investigation has reasonable objection to any proposed subcontractor, other person or organization, either may before giving the Notice of Award request the apparent Successful Bidder to submit an acceptable substitute without an increase in Bid price. If the apparent successful Bidder declines to make any such substitution, the Contract shall not be awarded to such Bidder, but his/her declining to make any such substitution will not constitute grounds for sacrificing his/her Bid Security. Any subcontractor, other person or organization so listed and to whom Owner or Engineer does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer.
- 8.2 In contracts where the Contract Price is on the basis of Cost-of-the-Work Plus a Fee, the apparent Successful Bidder, prior to the Notice of Award shall identify in writing to Owner those portions of the work that such Bidder proposes to subcontract and after the Notice of Award may only subcontract other portions of the work with Owner's written consent.
- 8.3 No Contractor shall be required to employ any subcontractor, other person or organization against whom he/she has reasonable objection.
9. BID FORM.
- 9.1 One Bid Form is attached hereto and is provided to each Bidder requesting Bid Documents. Additional copies may be obtained from the Engineer.
- 9.2 Bid Forms must be completed in ink or by typewriter. The Bid Price of each item on the form must be stated in words and numerals; in case of a conflict, words will take precedence.

- 9.3 Bids by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.
- 9.4 Bids by partnerships must be executed in the partnership name and be signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.
- 9.5 All names must be typed or printed below the signature.
- 9.6 The Bid shall contain an acknowledgement of receipt of all Addenda (the number of which shall be filled in on the Bid Form).
- 9.7 The address to which communications regarding the Bid are to be directed must be shown.
10. SUBMISSION OF BIDS. Bids shall be submitted at the time and place indicated in the Invitation to Bid or Advertisement for Bids and shall be included in an opaque sealed envelope, marked with the Project title and name and address of the Bidder and accompanied by the Bid Security and other required documents. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face thereof. Bids arriving at the designated place after the designated time will be returned to the Bidder unopened.
11. MODIFICATION AND WITHDRAWAL OF BIDS.
- 11.1 Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered to the place where Bids are to be submitted at any time prior to the opening of Bids.
- 11.2 If, within twenty-four (24) hours after Bids are opened, any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of his/her Bid, that Bidder may withdraw his/her Bid and the Bid Security will be returned. Thereafter, that Bidder will be disqualified from further bidding on the work.
12. OPENING OF BIDS. When Bids are opened publicly, they will be read aloud and an abstract of the amounts of the base Bids and major alternates (if any) will be made available after the opening of Bids
13. BIDS TO REMAIN OPEN. All Bids shall remain open for sixty days after the day of the Bid opening, but Owner may, in his/her sole discretion, release any Bid and return the Bid Security prior to that date.
14. AWARD OF CONTRACT.
- 14.1 Owner reserves the right to reject any and all Bids, to waive any and all informalities and to negotiate Contract terms with the Successful Bidder, and the right to disregard all nonconforming, non-responsive or conditional Bids. The quantities shown on the Bid Form are estimated and are furnished only as a basis to prepare a Bid and to determine the lowest Bidder. The Bid Price shall be determined by multiplying the unit price bid per item times the estimated quantity per item. The sum total of all Bid Prices shall be the Contract Price and the basis for determining the lowest Bid. Discrepancies between words and figures in a unit price bid will be resolved to harmonize with the Bid Price. If neither the words nor figures in the unit price harmonize with the Bid Price, the words will be used as the unit price bid.
- 14.2 In evaluating Bids, Owner shall consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, and alternates and unit prices if requested in the Bid Forms. It is Owner's intent to accept alternates (if any are accepted) in the order in which they are listed in the Bid form but Owner may accept them in any order or combination.
- 14.3 Owner may consider the qualifications and experience of subcontractors and other persons and

organizations (including those who are to furnish the principal items of material or equipment) proposed for those portions of the work as to which the identity of subcontractors and other persons and organizations must be submitted as provided in the Special Provisions. Operating costs, maintenance considerations, performance data and guarantee of materials and equipment may also be considered by Owner.

- 14.4 Owner may conduct such investigations as he/she deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of the Bidders, proposed subcontractors and other persons and organizations to do the work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time.
  - 14.5 Owner reserves the right to reject the Bid of any Bidder who does not pass any such evaluation to Owner's satisfaction.
  - 14.6 If the Contract is to be awarded, it will be awarded to the lowest Bidder whose evaluation by Owner indicates to Owner that the award will be in the best interests of the Project.
  - 14.7 If the Contract is to be awarded, Owner will give the Successful Bidder a Notice of Award within sixty days after the date of the Bid opening or other specified date.
15. PERFORMANCE AND OTHER BONDS. Paragraph 3.04 of the General Conditions set forth Owner's requirements as to performance and other Bonds. When the Successful Bidder delivers the executed Agreement to Owner, it shall be accompanied by the required Contract Security.
  16. SIGNING OF AGREEMENT. When Owner gives a Notice of Award to the Successful Bidder, it will be accompanied by at least three unsigned counterparts of the Agreement and all other Contract Documents. Within fifteen days thereafter, Contractor shall sign and deliver at least three counterparts of the Agreement to Owner with all other Contract Documents attached. Within ten days thereafter, Owner will deliver all fully signed counterparts to Contractor. Engineer will identify those portions of the Contract Documents not fully signed by Owner and Contractor and such identification shall be binding on all parties.
  17. SPECIAL LEGAL REQUIREMENTS. Special Legal Requirements, if any, will be included in the Special Provisions.

**END OF DOCUMENT**

**FORM OF AGREEMENT  
BETWEEN CITY OF CHANHASSEN AND CONTRACTOR**

**THIS AGREEMENT, made** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF CHANHASSEN, a Minnesota municipal corporation (“Owner”) and \_\_\_\_\_ (“Contractor”). Owner and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

**1. CONTRACT DOCUMENTS.** The following documents shall be referred to as the “Contract Documents”, all of which shall be taken together as a whole as the contract between the parties as if they were set verbatim and in full herein:

- A. This Agreement;
- B. Specifications dated \_\_\_\_\_;
- C. City of Chanhassen General Conditions of the Construction Contract;
- D. Quote/Bid dated \_\_\_\_\_.

In the event of a conflict among the provisions of the Contract Documents, the order in which they are listed above shall control in resolving any such conflicts with Contract Document “A” having the first priority and Contract Document “D” having the last priority.

**2. OBLIGATIONS OF THE CONTRACTOR.** The contractor shall provide the goods, services, and perform the work in accordance with the Contract Documents.

**3. CONTRACT PRICE.** Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents \_\_\_\_\_.

**4. PAYMENT PROCEDURES.**

- A. Contractor shall submit Applications for Payment. Applications for Payment will be processed by Engineer as provided in the General Conditions.
- B. Progress Payments; Retainage. Owner shall make 95% progress payments on account of the Contract Price on the basis of Contractor’s Applications for Payment during performance of the Work.
- C. Payments to Subcontractor.
  - (1) Prompt Payment to Subcontractors. Pursuant to Minn. Stat. § 471.425, Subd. 4a, the Contractor must pay any subcontractor within ten (10) days of the Contractor’s receipt of payment from the City for undisputed services provided by the subcontractor. The Contractor must pay interest of 1½ percent per month or any

part of a month to the Subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, the Contractor shall pay the actual penalty due to the subcontractor.

- (2) Form IC-134 (attached) required from general contractor. Minn. Stat. § 290.92 requires that the City of Chanhassen obtain a Withholding Affidavit for Contractors, Form IC-134, before making final payments to Contractors. This form needs to be submitted by the Contractor to the Minnesota Department of Revenue for approval.

The form is used to receive certification from the state that the vendor has complied with the requirement to withhold and remit state withholding taxes for employee salaries paid.

- D. Final Payment. Upon final completion of the Work, Owner shall pay the remainder of the Contract Price as recommended by Engineer.

## **5. COMPLETION DATE/LIQUIDATED DAMAGES.**

- A. The Work must be completed within \_\_\_\_ ( ) days after the date the Contract Times commence to run, and completed and ready for final payment in accordance with the General Conditions within \_\_\_\_ ( ) days after the date when the Contract Times commence to run.
- B. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 5.A. above, plus any extensions thereof allowed. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$\_\_\_\_\_ for each calendar day that expires after the time specified in Paragraph 5.A. for Completion until the Work is complete.

Daily costs are based on MnDOT Table 1807-1, "Schedule of Liquidated Damages as follows:

TABLE 1807-1 SCHEDULE OF LIQUIDATED DAMAGES		
Original Contract Amount		Charge Per Cal. Day
From More Than (\$)	To and Including (\$)	
0	25,000	300
25,000	100,000	400
100,000	500,000	900
500,000	1,000,000	1,200
1,000,000	2,000,000	1,500
2,000,000	5,000,000	2,500
5,000,000	10,000,000	3,000
10,000,000	----	3,500

**6. CONTRACTOR'S REPRESENTATIONS.**

- A. Contractor has examined and carefully studied the Contract Documents and other related data identified in the Contract Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the site.
- E. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.
- F. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in

accordance with the other terms and conditions of the Contract Documents.

- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- I. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- K. Subcontracts:
  - (1) Unless otherwise specified in the Contract Documents, the Contractor shall, upon receipt of the executed Contract Documents, submit in writing to the Owner the names of the Subcontractors proposed for the work. Subcontractors may not be changed except at the request or with the consent of the Owner.
  - (2) The Contractor is responsible to the Owner for the acts and omissions of the Contractor's subcontractors, and of their direct and indirect employees, to the same extent as the Contractor is responsible for the acts and omissions of the Contractor's employees.
  - (3) The Contract Documents shall not be construed as creating any contractual relation between the Owner, the Engineer, and any Subcontractor.
  - (4) The Contractor shall bind every Subcontractor by the terms of the Contract Documents.

**7. WORKER'S COMPENSATION.** The Contractor shall obtain and maintain for the duration of this Contract, statutory Worker's Compensation Insurance and Employer's Liability Insurance as required under the laws of the State of Minnesota.

**8. COMPREHENSIVE GENERAL LIABILITY.** Contractor shall obtain the following minimum insurance coverage and maintain it at all times throughout the life of the



Contract, with the City included as an additional name insured on a primary and non-contributory basis. The Contractor shall furnish the City a certificate of insurance satisfactory to the City evidencing the required coverage:

Bodily Injury: \$2,000,000 each occurrence  
\$2,000,000 aggregate products and completed operations

Property Damage: \$2,000,000 each occurrence  
\$2,000,000 aggregate Contractual Liability (identifying the contract):  
Bodily Injury: \$2,000,000 each occurrence

Property Damage: \$2,000,000 each occurrence  
\$2,000,000 aggregate

Personal Injury, with Employment Exclusion deleted:

\$2,000,000 aggregate Comprehensive Automobile Liability (owned, non-owned, hired):

Bodily Injury: \$2,000,000 each occurrence  
\$2,000,000 each accident

Property Damage: \$2,000,000 each occurrence

**9. WARRANTY.** The Contractor guarantees that all new equipment warranties as specified within the quote shall be in full force and transferred to the City upon payment by the City. The Contractor shall be held responsible for any and all defects in workmanship, materials, and equipment which may develop in any part of the contracted service, and upon proper notification by the City shall immediately replace, without cost to the City, any such faulty part or parts and damage done by reason of the same in accordance with the bid specifications.

**10. INDEMNITY.** The Contractor agrees to indemnify and hold the City harmless from any claim made by third parties as a result of the services performed by it. In addition, the Contractor shall reimburse the City for any cost of reasonable attorney's fees it may incur as a result of any such claims.

**11. MISCELLANEOUS.**

- A. Terms used in this Agreement have the meanings stated in the General Conditions.
- B. Owner and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors,

assigns and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

- C. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provisions.
- D. Data Practices/Records.
  - (1) All data created, collected, received, maintained or disseminated for any purpose in the course of this Contract is governed by the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, any other applicable state statute, or any state rules adopted to implement the act, as well as federal regulations on data privacy.
  - (2) All books, records, documents and accounting procedures and practices to the Contractor and its subcontractors, if any, relative to this Contract are subject to examination by the City.
- E. Software License. If the equipment provided by the Contractor pursuant to this Contract contains software, including that which the manufacturer may have embedded into the hardware as an integral part of the equipment, the Contractor shall pay all software licensing fees. The Contractor shall also pay for all software updating fees for a period of one year following cutover. The Contractor shall have no obligation to pay for such fees thereafter. Nothing in the software license or licensing agreement shall obligate the City to pay any additional fees as a condition for continuing to use the software.
- F. Patented devices, materials and processes. If the Contract requires, or the Contractor desires, the use of any design, device, material or process covered by letters, patent or copyright, trademark or trade name, the Contractor shall provide for such use by suitable legal agreement with the patentee or owner and a copy of said agreement shall be filed with the Owner. If no such agreement is made or filed as noted, the Contractor shall indemnify and hold harmless the Owner from any and all claims for infringement by reason of the use of any such patented designed, device, material or process, or any trademark or trade name or copyright in connection with the Project agreed to be performed under the Contract, and shall indemnify and defend the Owner for any costs, liability, expenses and attorney's fees that result from any such infringement
- G. Assignment. Neither party may assign, sublet, or transfer any interest or obligation in this Contract without the prior written consent of the other

party, and then only upon such terms and conditions as both parties may agree to and set forth in writing.

- H. Waiver. In the particular event that either party shall at any time or times waive any breach of this Contract by the other, such waiver shall not constitute a waiver of any other or any succeeding breach of this Contract by either party, whether of the same or any other covenant, condition or obligation.
- I. Governing Law/Venue. The laws of the State of Minnesota govern the interpretation of this Contract. In the event of litigation, the exclusive venue shall be in the District Court of the State of Minnesota for Carver County.
- J. Severability. If any provision, term or condition of this Contract is found to be or become unenforceable or invalid, it shall not affect the remaining provisions, terms and conditions of this Contract, unless such invalid or unenforceable provision, term or condition renders this Contract impossible to perform. Such remaining terms and conditions of the Contract shall continue in full force and effect and shall continue to operate as the parties' entire contract.
- K. Entire Agreement. This Contract represents the entire agreement of the parties and is a final, complete and all inclusive statement of the terms thereof, and supersedes and terminates any prior agreement(s), understandings or written or verbal representations made between the parties with respect thereto.
- L. Permits and Licenses; Rights-of-Way and Easements. The Contractor shall procure all permits and licenses, pay all charges and fees therefore, and give all notices necessary and incidental to the construction and completion of the Project. The City will obtain all necessary rights-of-way and easements. The Contractor shall not be entitled to any additional compensation for any construction delay resulting from the City's not timely obtaining rights-of-way or easements.
- M. If the work is delayed or the sequencing of work is altered because of the action or inaction of the Owner, the Contractor shall be allowed a time extension to complete the work but shall not be entitled to any other compensation.

**CITY OF CHANHASSEN**

**CONTRACTOR**

BY: \_\_\_\_\_  
Elise Ryan, Mayor

\_\_\_\_\_

BY: \_\_\_\_\_  
Laurie Hokkanen, City Manager

BY: \_\_\_\_\_  
Its \_\_\_\_\_

**END OF DOCUMENT**

SAMPLE

**PERFORMANCE BOND**

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Address of Principal Place of Business):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OWNER (Name and Address)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CONSTRUCTION CONTRACT

Date: \_\_\_\_\_

Amount: \_\_\_\_\_

Description (Name and Location): \_\_\_\_\_

BOND

Date (Not earlier than Construction Contract Date): \_\_\_\_\_

Amount: \_\_\_\_\_

Modification to this Bond Form: None, \_\_\_\_\_

CONTRACTOR AS PRINCIPAL

SURETY

\_\_\_\_\_  
Bidder's Name and Corporate Seal (Seal)

\_\_\_\_\_  
Surety's Name and Corporate Seal (Seal)

By: \_\_\_\_\_  
Signature and Title

By: \_\_\_\_\_  
Signature and Title

CONTRACTOR AS PRINCIPAL

SURETY

\_\_\_\_\_  
Bidder's Name and Corporate Seal (Seal)

\_\_\_\_\_  
Surety's Name and Corporate Seal (Seal)

By: \_\_\_\_\_  
Signature and Title

By: \_\_\_\_\_  
Signature and Title

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.
3. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:
  - 3.1. The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipts of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and
  - 3.2. The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and
  - 3.3. The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.
4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
  - 4.1. Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or
  - 4.2. Undertake to perform and complete the Construction Contract itself; through its agents or through independent contractors; or
  - 4.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the resulting from the Contractor's default; or
  - 4.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
    1. After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefore to the Owner; or
    2. Deny liability in whole or in part and notify the Owner citing reasons therefore.
5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elected to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract.. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:
  - 6.1. The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract:
  - 6.2. Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and
  - 6.3. Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, or successors.
8. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontractors, purchase orders and other obligations.
9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of

this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.
11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

## 12. DEFINITIONS

- 12.1. Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
- 12.2. Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
- 12.3. Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.
- 12.4. Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

SAMPLE

# PAYMENT BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

---

CONTRACTOR (Name and Address):

SURETY (Name and Address of Principal Place  
Of Business):

OWNER (Name and Address):

## CONTRACT

Date:

Amount:

Description (Name and Location):

## BOND

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent or representative.

CONTRACTOR AS PRINCIPAL

Company: \_\_\_\_\_ (Corp. Seal)

SURETY

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR AS PRINCIPAL

Company: \_\_\_\_\_ (Corp. Seal)

SURETY

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

EJCDE No. 1910-28-A (1996 Edition)

Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, and the American Institute of Architects.



1. The CONTRACTOR and the Surety, jointly and severally, bind themselves, their heirs, executors, administrator, successors and assigns to the OWNER to pay for labor, materials and equipment furnished for use in the performance of the Contract, which is incorporated herein by reference.

2. With respect to the OWNER, this obligation shall be null and void if the CONTRACTOR:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies and holds harmless the OWNER from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Contract, provided the OWNER has promptly notified the CONTRACTOR and the Surety (at the addresses described in paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the CONTRACTOR and the Surety, and provided there is no OWNER Default.

3. With respect to Claimants, this obligation shall be null and void if the CONTRACTOR promptly makes payment, directly or indirectly, for all sums due.

4. The Surety shall have no obligation to Claimants under this bond until:

4.1 Claimants who are employed by or have a direct contract with the CONTRACTOR have given notice to the Surety (at the addresses described in paragraph 12) and sent a copy, of notice thereof, to the OWNER, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the CONTRACTOR:

1. Have furnished written notice to the CONTRACTOR and sent a copy, or notice thereof, to the OWNER, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials are furnished or supplied or for whom the labor was done or formed; and

2. Have either received a rejection in whole or in part from the CONTRACTOR, or not received within 30 days of furnishing the above notice any communication from the CONTRACTOR by which the CONTRACTOR had indicated the claim will be paid directly or indirectly; and

3. Not having been paid within the above 30 days, have sent a written notice to the Surety and sent a copy, or notice thereof, to the OWNER, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the CONTRACTOR.

5. If a notice required by paragraph 4 is given by the OWNER to the CONTRACTOR or to the Surety, that is sufficient compliance.

6. When the Claimant has satisfied the conditions of paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the OWNER, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8. Amounts owed by the OWNER to the CONTRACTOR under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any Performance Bond. By the CONTRACTOR furnishing and the OWNER accepting this Bond, they agree that all funds earned by the CONTRACTOR in the performance of the Contract are dedicated to satisfy obligations of the CONTRACTOR and the Surety under this Bond, subject to the OWNER's priority to use the funds for the completion of the Work.

(FOR INFORMATION ONLY—Name, Address, and Telephone)  
AGENT or BROKER: OWNER'S REPRESENTATIVE (ENGINEER or other party)

9. The Surety shall not be liable to the OWNER, Claimants or others for obligations of the CONTRACTOR that are unrelated to the Contract. The OWNER shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related Subcontracts, purchase orders and other obligations.

11. No suit or action shall be commenced by the Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by paragraph 4.1 or paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the OWNER or the CONTRACTOR shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, the OWNER or the CONTRACTOR, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions confirming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory Bond and not as a common law bond.

14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, the CONTRACTOR shall promptly furnish a copy of this Bond or shall permit a copy to be made.

## 15. DEFINITIONS

15.1 Claimant: An individual or entity having a direct contract with the CONTRACTOR or with a Subcontractor of the CONTRACTOR to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include within limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of the CONTRACTOR and the CONTRACTOR's Subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2 Contract: The agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto.

15.3 OWNER Default: Failure of the OWNER, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Contractor or to perform and complete or comply with the other terms thereof.

**FORM OF NON-COLLUSION AFFIDAVIT  
(MUST BE SUBMITTED WITH BID PROPOSAL)**

Affidavit of Non-Collusion:

I hereby swear (or affirm) under the penalty for perjury:

1. That I am the bidder (if the bidder is an individual), a partner in the bidder partnership (if the bidder is a partnership), or an officer or employee of the bidding corporation having authority to sign on its behalf (if the bidder is a corporation).
2. That the attached bid or bids have been arrived at by the bidder independently, and have been submitted without collusion with, and without, any other vendor of materials, supplies, equipment, or other services described in the invitation to bid, designed to limit independent bidding or competition.
3. That the contents of the bid or bids have not been communicated by the bidder or its employees or agents to any person not an employee or agent of the bidder or its surety on any bond furnished with the bid or bids, and will not be communicated to any such person prior to the official opening of the bids or bids; and
4. That I have fully informed myself regarding the accuracy of the statements made in this affidavit.

Signed \_\_\_\_\_

Firm \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

**CONTRACTOR VERIFICATION OF COMPLIANCE**

The undersigned, being first duly sworn, as a responding contractor on the Project, represents and swears as follows:

Now, and at all times during the duration of the Project, the undersigned complies with each of the minimum criteria in Minn. Stat. § 16C.285, subd. 3, the Responsible Contractor statute.

The undersigned understands that a failure to meet or verify compliance with the minimum criteria established for a "responsible contractor" as defined in Minn. Stat. § 16C.285, subd. 3, renders a bidder ineligible to be awarded a construction contract for the Project or to perform work on the Project.

Upon request, the undersigned will submit copies of the signed verifications of compliance from all subcontractors.

The undersigned understands that a false statement under oath verifying compliance with any of the minimum criteria shall make the undersigned, or its subcontractor that makes the false statement, ineligible to be awarded a construction project and may result in termination of a contract awarded to the undersigned or its subcontractor that submits a false statement.

**CONTRACTOR:**

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

## RESPONSIBLE CONTRACTOR VERIFICATION OF COMPLIANCE

Minnesota Statutes, Section 16C.285, subdivision 3. **Responsible Contractor, Minimum Criteria.** “Responsible Contractor” means a contractor that conforms to the responsibility requirements in the solicitation document for its portion of the work on the project and verifies that it meets the minimum criteria set forth below. Each contractor or subcontractor shall obtain from all subcontractors with which it will have a direct contractual relationship a signed statement under oath by an owner or officer verifying that they meet all of the minimum criteria in subdivision 3 prior to execution of a construction contract with each subcontractor.

1. The Contractor:
  - i. is in compliance with workers' compensation and unemployment insurance requirements;
  - ii. is in compliance with the Department of Revenue and the Department of Employment and Economic Development registration requirements if it has employees;
  - iii. has a valid federal tax identification number or a valid Social Security number if an individual; and
  - iv. has filed a certificate of authority to transact business in Minnesota with the secretary of state if a foreign corporation or cooperative.
  
2. The contractor or related entity is in compliance with and, during the three-year period before submitting verification, has not violated section 177.24, 177.25, 177.41 to 177.44, 181.13, 181.14, or 181.722, and has not violated United States Code, title 29, sections 201 to 219, or United States Code, title 40, section 3141 to 3148. For purposes of this clause, a violation occurs when a contractor or related entity:
  - i. repeatedly fails to pay statutorily required wages or penalties on one or more separate projects for a total underpayment of \$25,000 or more within the three-year period, provided that a failure to pay is “repeated” only if it involves two or more separate and distinct occurrences of underpayment during the three-year period;
  - ii. has been issued an order to comply by the commissioner of labor and industry that has become final;
  - iii. has been issued at least two determination letters within the three-year period by the Department of Transportation finding an underpayment by the contractor or related entity to its own employees;
  - iv. has been found by the commissioner of labor and industry to have repeatedly or willfully violated any of the sections referenced in this clause pursuant to section 177.27;
  - v. has been issued a ruling or findings of underpayment by the administrator of the Wage and Hour Division of the United States Department of Labor that have become final or have been upheld by an administrative law judge or the Administrative Review Board; or
  - vi. has been found liable for underpayment of wages or penalties or misrepresenting a construction worker as an independent contractor in an action brought in a court having jurisdiction.

Provided that, if the contractor or related entity contests a determination of underpayment by the Department of Transportation in a contested case proceeding, a

violation does not occur until the contested case proceeding has concluded with a determination that the contractor or related entity underpaid wages or penalties;\*

3. The contractor or related entity is in compliance with and, during the three-year period before submitting the verification, has not violated section 181.723 or chapter 326B. For purposes of this clause, a violation occurs when a contractor or related entity has been issued a final administrative or licensing order;\*
4. The contractor or related entity has not, more than twice during the three-year period before submitting the verification, had a certificate of compliance under section 363A.36 revoked or suspended based on the provisions of section 363A.36, with the revocation or suspension becoming final because it was upheld by the Office of Administrative Hearings or was not appealed to the office;\*
5. The contractor or related entity has not received a final determination assessing a monetary sanction from the Department of Administration or Transportation for failure to meet targeted group business, disadvantaged business enterprise, or veteran-owned business goals, due to a lack of good faith effort, more than once during the three-year period before submitting the verification; and\*
6. The contractor or related entity is not currently suspended or debarred by the federal government or the state of Minnesota or any of its departments, commissions, agencies, or political subdivisions that have authority to debar a contractor.

\*Any violations, suspensions, revocations, or sanctions, as defined in clauses 2 to 5 occurring prior to July 1, 2014, shall not be considered in determining whether a contractor or related entity meets the minimum criteria.

### **Certification**

**By signing this document, I am certifying that I am an owner or officer of the contractor and am verifying under oath that:**

- 1. Contractor is in compliance with Minnesota Statutes, Section 16C.285, and**
- 2. I have included Attachment A-1.**

Contractor Company Name

Date

Authorized Signature of Owner or Officer

Printed Name

Title

**ATTACHMENT A-1: FIRST-TIER SUBCONTRACTORS LIST  
(Initial List)**

Minnesota Statutes, Section 16C.285, subdivision 5. A prime contractor or subcontractor shall include in its verification of compliance . . . a list of all of its first-tier subcontractors that it intends to retain for work on the project.

**SUBMIT WITH CONTACTOR SOLICITATION RESPONSE**

NAME OF FIRST TIER SUBCONTRACTORS (Legal name of company as registered with the Secretary of State)	Company Address	Work to be Performed

**NOTICE OF AWARD**

Dated \_\_\_\_\_, 20\_\_

TO: \_\_\_\_\_  
(BIDDER)

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PROJECT \_\_\_\_\_

OWNER'S CONTRACT NO. \_\_\_\_\_

CONTRACT FOR \_\_\_\_\_  
\_\_\_\_\_

You are notified that your Bid dated \_\_\_\_\_, 20\_\_ or the above Contract has been considered. You are the apparent Successful Bidder and have been awarded a contract for

\_\_\_\_\_

The Contract Price of your contract is \_\_\_\_\_  
\_\_\_\_\_ and xx/100..... Dollars (\$ \_\_\_\_\_).

\_\_\_\_\_ copies of each of the proposed Contract Documents (except Drawings) accompany this Notice of Award.

\_\_\_\_\_ sets of the Drawings will be delivered separately or otherwise made available to you immediately.

You must comply with the following conditions precedent within fifteen days of the date of this Notice of Award, that is by \_\_\_\_\_, 20\_\_.

1. You must deliver to the OWNER \_\_\_\_\_ fully executed counterparts of the Agreement including all the Contract Documents. Each of the Contract Documents must bear your signature.
2. You must deliver with the executed Agreement the Performance Bond and Payment Bond as specified in the General Conditions.
3. You must deliver with the executed Agreement a Certificate of Insurance as specified in the General Conditions.

**NOTICE TO PROCEED**

Dated \_\_\_\_\_, 20\_\_

TO: \_\_\_\_\_  
(CONTRACTOR)

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PROJECT \_\_\_\_\_

OWNER'S CONTRACT NO. \_\_\_\_\_

CONTRACT FOR \_\_\_\_\_  
\_\_\_\_\_

You are notified that the Contract Times under the above contract will commence to run on \_\_\_\_\_, 20\_\_. By that date, you are to start performing your obligations under Contract Documents. In accordance with Article 3 of the Agreement, the dates of Substantial Completion and completion and readiness for final payment are \_\_\_\_\_, 20\_\_, and \_\_\_\_\_, 20\_\_.

Before you may start any Work at the site, you must

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
CITY OF CHANHASSEN  
(OWNER)

By: \_\_\_\_\_  
(AUTHORIZED SIGNATURE)

\_\_\_\_\_  
(TITLE)

ACCEPTANCE OF AWARD

\_\_\_\_\_  
(CONTRACTOR)

By: \_\_\_\_\_  
(AUTHORIZED SIGNATURE)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(DATE)



## 9.19 AS-BUILT REQUIREMENTS

Upon completion of construction and acceptance of the final punchlist, all elements of the project shall be remeasured with an as-built field survey. The as-built plans shall be corrected and modified to show correct distances, elevations, dimensions, and any other change in the specific detail of the plans. All changes shall be drawn to scale to accurately represent the work constructed. All elevation/length changes shall be crossed out and correct information added and all locations updated on the as-built plans.

Upon completion of all public utility and street improvement projects and within 60 days of acceptance of the final punchlist, the project engineer shall supply a set of as-built drawings and tie-cards in .pdf format to the City for review. If changes or corrections are required, the as-built plans and tie cards will be returned to the project engineer showing any corrections to be made as marked in red.

Once all changes to the as-built plans have been made and approved by the City, the project engineer shall supply the City with all submittals required under Section 2. Electronic Documents, below.

### 1. As-built Requirements:

- A. Indicate on the cover sheet of the as-built drawings the benchmark system, the contractor(s) that performed the street and/or utility improvements, the Engineer of Record, and if applicable the Developer. The top nut on each fire hydrant shall be noted and used as a benchmark.
- B. All curb boxes, gate valves, and draitile clean-outs shall be located by swing ties shown on the as-built plans and shall be measured in the field at the time of installation.
  1. Curb box swing ties are to be supplied on the City of Chanhassen's standard tie card (Detail Plate No. 5221). Only the curb box swing tie applicable for the lot it is servicing shall be shown on the tie card.
  2. Swing ties to permanent structures such as manholes, catch basins, fire hydrants, etc. shall be no longer than 100 feet in length.
  3. Utility boxes, trees, property corners are not acceptable swing tie points.
  4. If a permanent structure is not available within the 100-foot length, or there is no sanitary sewer to properly reference a station of the curb stop at the property line from a downstream manhole, a third tie point of not more than 150 feet is to be supplied or tied between curb boxes.
- C. The water main profile shall be shown with the appropriate information as to size, type of pipe, depth of cover, location of vertical bends, and any insulation.
- D. All sanitary and storm sewer lines shall be shown in plan and profile with the appropriate information as to size, type of material, length, class of pipe, vertical separation (in feet) of utility crossings, grade and elevations.
- E. All manholes shall be numbered in both plan and profile view utilizing the approved City's nomenclature. All inverts, top of casting or rim elevations, depth of manhole and

stationing shall be provided. Stationing of sanitary sewer wyes shall be provided from the downstream manhole.

- F. If water and sewer services are not located in the same trench, it shall be noted on the as-built plans.
- G. If sanitary sewer service risers are constructed, the elevation (z) and coordinates (x, y) of the riser shall be provided and shown on the profile view to scale.
- H. The storm sewer as-built plans shall provide the limits of all ponding (normal and high water elevations), acres-feet of storage, outlet control structure details (including all invert elevations), and typical sections for each stormwater BMP.
  - I. Prior to acceptance, all stormwater BMPs shall be field surveyed. The Engineer of Record shall confirm the BMPs have been constructed per the approved design.
    - 1. The most recent Stormwater BMP Compliance and Acceptance Form shall be provided for each stormwater BMP installed in conjunction with the project prior to acceptance.
- J. The grading as-built plan must have spot elevations on all lot corners, building pads, swales/berms, emergency overflows and all other critical drainage areas.
- K. The storm sewer as-built plans shall include all drainage culverts, original and final grade of cover over pipe on the profile view if not indicated on street grade profile.
- L. The street as-built plans shall indicate the original and final grades as constructed, type of curb/gutter, sidewalk, draintile and associated clean-outs, manhole castings, hydrants, street width (back of curb to back of curb), right-of-way width, and curve data.
  - 1. Any sub-base excavation performed in efforts to correct unstable soil conditions shall be shown on the as-built plans indicating depth of sub-cut, sub-cut from station to station, type of backfill (select granular, size of rock, etc.), and location by center line station of any fabric that may have been used.
  - 2. The most recent MnDOT ADA Compliance Checklist (Curb Ramp) shall be provided for each curb ramp installed in conjunction with the project.
- M. All draintile used on the project shall be shown on the as-built street and storm drainage plans. The as-built plans shall also provide the size of pipe and depth installed.
- N. The lot and block numbers from the approved final plat and any easements which exist shall be shown on the as-built plans.
- O. Each as-built plan sheet shall indicate the date of installation, labeled as as-built or record plan, and the contractor who performed the work for the associated street and/or utility improvements.
- P. All trace wire access boxes shall be shown on the as-built plan. A note shall be added next to each box labeling the utility that it locates.

## 2. Electronic Format

- A. All construction plans must be submitted electronically to the City in AutoCAD .DWG or .DXF format in Carver County Coordinates within 120 days after completion of construction and acceptance of the final punchlist. In AutoCAD combine the XREFs to the layout drawings. All survey GPS data collected for the as-built plans must be delivered as a text file (.CSV) or GIS dataset (shapefile, Esri geodatabase). The data must include corresponding as-built structure reference numbers/ids for each corresponding GPS record. Each GPS record must include X, Y coordinates and Z elevation values. Data delivered must adhere to the horizontal control and vertical control requirements as defined in requirements found under subsection D. and E., below.
- B. The electronic plans shall be submitted within three folders. The first folder should contain .DWG or .DXF drawings.
  - 1. AS-BUILT PLAN SET (DWG): This folder should contain the entire as-built plan set and any drawings or pictures referenced to the plan set. It should also contain drawings related to the existing utilities and the proposed utilities submitted as construction drawings.
  - 2. AS-BUILT PLAN SET (PDF): This folder should contain signed, full size copies of the plan set and final plat in .pdf format.
  - 3. TIE CARDS: This folder should contain the tie cards submitted in .pdf format. Refer to City Detail Plate 5221 for tie card requirements.
- C. All electronic files must be accompanied by a “layer description list” which defines what each layer name represents within the drawing (e.g. “E-SAN is the existing sanitary sewer”, etc.). Only active layers need to be defined.
- D. Horizontal Control of the Construction Record Drawings and Final Plat must be on the Carver County Coordinate System.
- E. Vertical Control of the Construction Record Drawings must be on the City’s Benchmark System. The vertical control loop tying the project to the City’s benchmark must be submitted with the record drawings.