

PURCHASING AGENT AGREEMENT

THIS AGREEMENT is made by and between Brennan Construction of Minnesota, Inc. (“Agent”) and the City of Ramsey (“Owner”), a Minnesota city generally exempt from paying state sales and use tax under Minn. Stat. § 297A.70; and

WHEREAS, Owner is undertaking the construction on its property of certain improvements generally described as Ramsey Fire Station No. 2 (“the Project”); and

WHEREAS, Owner wishes to purchase on its own account materials, supplies and equipment for the Project (collectively “Tax-Exempt Materials”) as described in the attached Exhibits 1 and 2; and

WHEREAS, Owner has solicited separate bids for the Tax-Exempt Materials, the award of which was not contingent upon the successful award of any other part of the Project; and

WHEREAS, Agent is the successful bidder for the Tax-Exempt Materials; and

WHEREAS, Agent desires to act as Owner’s purchasing agent for purposes of acquiring the Tax-Exempt Materials for use exclusively in the Project

IT IS THEREFORE AGREED between the parties hereto that:

1. This Agreement is made with reference to, and where applicable shall be governed by, the specifications and provisions set forth in the Contract Documents as such are defined in the Owner/Contractor Agreement for the Project.

2. Owner appoints Agent to act as its purchasing agent for purchasing the Tax-Exempt Materials, and further authorizes Agent to appoint such subagents as Agent deems appropriate for carrying out the purposes of this Agreement, which subagents shall have similar powers of appointment.

3. It is understood and agreed that: (a) Owner takes title to the Tax-Exempt Materials at the point of delivery; (b) Owner assumes the risk of loss for all Tax-Exempt Materials; and (c) Owner bears all risk for defects in the Tax-Exempt Materials, including Tax-Exempt Materials incorporated into the real estate.

4. Agent (and any subagents) shall include the following Notice to Vendors/Suppliers in all purchase orders and other documents furnished to a vendor or supplier in connection with the purchase of any Tax-Exempt Materials:

NOTICE TO VENDORS/SUPPLIERS

The materials to which this document relates are being purchased by Brennan Construction of Minnesota, Inc. (*name of Agent*) as the purchasing agent of the City of Ramsey (“the Owner”). It is the Owner’s obligation, not the purchasing agent’s, to pay for the materials. Because the Owner is a city of Minnesota, this purchase is exempt from sales tax under Minn. Stat. § 297A.70.

5. Agent shall exercise reasonable care in performance of its duties as purchasing agent, including the inspection of the Tax-Exempt Materials for obvious or apparent defects or the failure of such materials to conform to the plans, specifications and all Contract Documents relating to the Project.

6. Owner shall pay the sum of \$1,685,000.00 for all of the Tax-Exempt Materials purchased by Agent under this Agreement. Agent shall direct vendors and suppliers to deliver invoices for the Tax-Exempt Materials to Owner in care of Agent at Brennan Construction of Minnesota, Inc., 124 East Walnut Street, Suite 20, Mankato, MN 56001 (*Agent’s address*). Agent shall submit invoices for payment to Owner, less retainage of five percent (5%), which invoices shall be due and payable upon Owner’s receipt of the invoices.

7. Agent shall promptly notify Owner of any sales and use tax audit by the Minnesota commissioner of Revenue or of the threatened imposition or assessment of any sales or use taxes. Owner may, at its sole option and cost, dispute, contest or otherwise resist the imposition or assessment of any such taxes. Upon reasonable notice to Owner, Agent may (but is not obligated to) take such actions as it deems reasonable in response to the threatened imposition or assessment of taxes, which actions shall be deemed to have been taken on Owner's behalf. If any Minnesota sales or use taxes are imposed or assessed with respect to any Tax-Exempt Materials purchased pursuant to this Agreement, Owner shall be solely responsible for the payment of such taxes, including any related penalties and interest, and shall hold Agent harmless and indemnify Agent from any such cost or expense related thereto, including any legal fees and costs incurred by Agent in connection therewith or in connection with the enforcement of this paragraph.

8. The agency relationship created by this Agreement is intended to be in compliance with Minnesota Rule 8130.1200 and its current interpretation by the Minnesota Department of Revenue.

9. The alternative dispute resolution provisions (if any) in the Owner/Contractor Agreement are incorporated herein by reference and are applicable to any dispute between the parties hereto arising out of this Agreement.

10. Owner may terminate this Agreement at any time and for any reason. Upon receiving notice of termination, Agent shall cease making any purchases and shall promptly notify any subagents it has appointed that such appointment has likewise been terminated, that they are to cease initiating any new purchases, and that they are to likewise notify any subagents they have appointed that they are to cease initiating any new purchases. Any purchases that were initiated by Agent or subagent prior to its receiving notice of termination and that cannot be reasonably reversed after it received notice of termination shall be deemed to have been made with authority.

11. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, assigns, and any subagents appointed pursuant to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this 15th day of April, 2015.

OWNER: By: _____
 Its: _____
AGENT: By: _____
 Its: _____

- Attachments:
Exhibit 1: Project Manual Table of Contents
Exhibit 2: Index of Project Drawings