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## **INFORMATION FOR BIDDERS**

BIDS will be received by the CITY OF RAMSEY (hereinafter called the "OWNER") at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, MN 55303 until July 21, 2017 at 10:00 a.m., and then at said office publicly opened and read aloud.

Each BID must be submitted in a sealed envelope, addressed to Bruce Westby, City Engineer, at the City of Ramsey. Each sealed envelope containing a BID must be plainly marked on the outside as "IP 17-04; Sunwood Drive Striping Improvements" and the envelope shall bear on the outside the name of the BIDDER, and their address and license number if applicable. If mailed, bids should be placed in a separate envelope and mailed to the City address noted above to the attention of City Engineer Bruce Westby.

All BIDS must be made on the required BID FORM. All blank spaces for BID prices must be filled out in ink or typewritten and the BID FORM must be fully completed and executed when submitted. Only one (1) copy of the BID FORM is required.

The OWNER may waive any informality or minor defects or reject any and all BIDS. Any BID may be withdrawn prior to the above scheduled time for the opening of BIDS or authorized postponement thereof. Any BID received after the time and date specified shall not be considered. No BIDDER may withdraw a BID within thirty (30) days after the actual date of the opening thereof. 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.

BIDDERS must satisfy themselves of the accuracy of the estimated quantities in the BID schedule by examination of the site and a review of the drawings and specifications, including any ADDENDA. After BIDS have been submitted, the BIDDER shall not assert that there was a misunderstanding concerning the quantities of WORK or of the nature of the WORK to be done.

The OWNER shall provide to BIDDERS all information which is pertinent to, and delineates and describes, the land owned and rights-of-way acquired or to be acquired.

The CONTRACT DOCUMENTS contain the provisions required for the construction of the PROJECT. Information obtained from an officer, agent or employee of the OWNER or any other person shall not affect the risks or obligations assumed by the CONTRACTOR or relieve the CONTRACTOR from fulfilling any of the conditions of the contract.

Each BID must be accompanied by a BID BOND in the amount of five percent (5%) of the total amount of the BID, made payable to the Treasurer of the City of Ramsey. As soon as the BID prices have been compared, the OWNER will return the BONDS of all except the three (3) lowest responsible BIDDERS. When the AGREEMENT is executed, the BONDS of the two remaining unsuccessful BIDDERS will be returned. The BID BOND of the successful BIDDER will be retained until the Payment BOND and Performance BOND have been executed and approved, after which, it will be returned. A certified check may be used in lieu of a BID BOND.

A Performance BOND and a Payment BOND, each in the amount of one hundred percent (100%) of the CONTRACT PRICE, with a corporate surety approved by the OWNER, will be required for the faithful performance of the contract.

Attorneys-in-fact who sign BID BONDS or Payment BONDS and Performance BONDS must file with each BOND a certified and effective dated copy of their power of attorney.

The party to whom the contract is awarded will be required to execute the AGREEMENT and obtain the Performance BOND and Payment BOND within ten (10) calendar days from the date when NOTICE OF AWARD is delivered to the BIDDER. The NOTICE OF AWARD shall be accompanied by the necessary AGREEMENT and BOND forms. In case of failure of the BIDDER to execute the AGREEMENT, the OWNER may at its option consider the BIDDER in default; in which case the BID BOND accompanying the proposal shall become the property of the OWNER.

The OWNER, within ten (10) days of receipt of acceptable Performance BOND, Payment BOND and AGREEMENT signed by the party to whom the AGREEMENT was awarded, shall sign the AGREEMENT and return to such party an executed duplicate of the AGREEMENT. Should the OWNER not execute the AGREEMENT within such period, the BIDDER may give WRITTEN NOTICE to withdraw his signed AGREEMENT. Such notice of withdrawal shall be effective upon receipt of that WRITTEN NOTICE by the OWNER.

The NOTICE TO PROCEED shall be issued within ten (10) 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 ten (10) 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 OWNER may make such investigations as he deems 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.

A conditional or qualified BID will not be accepted. Award will be made to the lowest responsible BIDDER.

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.

Each BIDDER is responsible for inspecting the site and for reading and being thoroughly familiar with the CONTRACT DOCUMENTS. The failure or omission of any BIDDER to do any of the foregoing shall in no way relieve any BIDDER from any obligation in respect to their BID.

The low BIDDER shall supply the names and addresses of major material SUPPLIERS and SUBCONTRACTORS when requested to do so by the OWNER.

The ENGINEER is Bruce Westby, City Engineer, 7550 Sunwood Drive NW, Ramsey, MN 55303; telephone (763) 433-9825.

## **BID PROPOSAL**

This Bid is submitted to the City of Ramsey for City Improvement Project #17-04 – Sunwood Drive Striping Improvements.

That \_\_\_\_\_, the undersigned bidder, proposes and agrees, if this bid is accepted, to enter into an agreement with the Owner in the form included in the contract documents to perform and furnish all work as specified or indicated in the contract documents for the Contract Price and within the contract time indicated in this Bid and in accordance with the other terms and conditions of the contract documents.

In submitting this bid, bidder represents, as more fully set forth in the Agreement, that:

- (a) Bidder has examined copies of all bidding documents and of the following addenda (receipt of all which is hereby acknowledged:

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- (b) Bidder has familiarized himself with the nature and extent of the contract documents, work, site, locality and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.
- (c) Bidder has given Engineer written notice of all conflicts, errors or discrepancies that it has discovered in the contract documents and the written resolution thereof by Engineer is acceptable to bidder.
- (d) This bid is genuine, is not made in the interest of or on behalf of any undisclosed person, firm or corporation, and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; bidder has not directly or indirectly induced or solicited any other bidder to submit a false or sham bid; bidder has not solicited or induced any person, firm or corporation to refrain from bidding and bidder has not sought by collusion to obtain for itself any advantages over any other bidder or over owner.
- (e) Bidder agrees that final completion will occur by August 25, 2017, and agrees to pay liquidated damages as provided for therein.
- (f) A bid bond in the amount of five percent (5%) of the basic bid contained herein is attached. This bid bond shall be forfeited if the bidder fails to execute and file the required contract and bond within ten (10) days after notification of the bid award by the owner.
- (g) The contractor agrees to perform all work described in the contract documents for the following unit prices or lump sum:

**BID PROPOSAL**

<b>ITEM NO.</b>	<b>MNDOT NO.</b>	<b>ITEM DESCRIPTION</b>	<b>UNIT</b>	<b>QUANTITY</b>	<b>PRICE</b>	<b>EXTENSION</b>
1	2021.501	MOBILIZATION	LS	1	_____	_____
2	2102.501	PAVEMENT MARKING REMOVAL	SF	480	_____	_____
3	2102.502	PAVEMENT MARKING REMOVAL	LF	2,104	_____	_____
4	2563.601	TRAFFIC CONTROL	LS	1	_____	_____
5	2582.501	PAVT MSSG (LT ARROW) – EPOXY	EA	16	_____	_____
6	2582.501	PAVT MSSG (RT ARROW) – EPOXY	EA	2	_____	_____
7	2582.502	4” DOUBLE SOLID LINE YELLOW – EPOXY	LF	3,652	_____	_____
8	2582.502	4” SOLID LINE WHITE – EPOXY	LF	5,895	_____	_____
9	2582.502	24” SOLID LINE YELLOW – EPOXY	LF	427	_____	_____

**TOTAL BID LINES 1-9**

\_\_\_\_\_

This Bid Submitted by:

If Bidder is:

An Individual

Name (typed or printed): \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
(Individuals Signature)

Doing Business as: \_\_\_\_\_

A Partnership

Partnership Name: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
(Signature of general partner – attach evidence of authority to sign)

Name (typed or printed): \_\_\_\_\_

A Corporation

Corporation Name: \_\_\_\_\_ (SEAL)

State of Incorporation: \_\_\_\_\_

Type: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature of general partner – attach evidence of authority to sign)

Name (typed or printed): \_\_\_\_\_

Title: \_\_\_\_\_  
(CORPORATE SEAL)

Attest: \_\_\_\_\_  
(Signature of Corporate Secretary)

Date of Qualification to do business in Minnesota is: \_\_\_\_\_

A Joint Venture

Name of Joint Venture: \_\_\_\_\_ (SEAL)

First Joint Venturer Name: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature of first joint venture partner – attach evidence of authority to sign)

Name (typed or printed): \_\_\_\_\_

Title: \_\_\_\_\_

Second Joint Venturer Name: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature of second joint venture partner – attach evidence of authority to sign)

(Each joint venture must sign. The manner of signing for each individual, partnership, and corporation that is party to the joint venture should be in the manner indicated above.)

Bidders Business Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_ Facsimile: \_\_\_\_\_

Submitted on \_\_\_\_\_, 2017

State Contractor License No. \_\_\_\_\_. (If Applicable)

## **S-1                    RESPONSIBLE CONTRACTOR**

In accordance with Laws of Minnesota, 2014, chapter 253 (Minnesota Statutes §16C.285), Bidders are hereby advised that the Department cannot award a construction contract in excess of \$50,000 unless the contractor is a “responsible contractor” as defined in Minnesota Statutes §16C.285, subdivision 3. A bidder submitting a Proposal for this Project must verify that it meets the minimum criteria specified in Minnesota Statutes §16C.285, subdivision 3, by completing the Responsible Contractor Certificate within this Proposal. Statements in the certificate must be certified by a company officer. Bidders are responsible for obtaining verifications of compliance from all subcontractors, using a form provided by the Department. A bidder must submit signed verifications from subcontractors upon the Department’s request.

A Bidder or subcontractor who does not meet the minimum criteria established in Minnesota Statutes §16C.285, subdivision 3, or who fails to verify compliance with the minimum requirements, will not be a “responsible contractor” and will be ineligible to be awarded the Contract for this Project or to work on this Project. Bidders and subcontractors are also advised that making a false statement verifying compliance with any of the minimum criteria will render the Bidder or subcontractor ineligible to be awarded a construction contract for this Project and may result in the termination of a contract awarded to a Bidder or subcontractor that makes a false statement.

## **S-2                    (1801) SUBLETTING OF CONTRACT** **REVISED 11/24/14**

The provisions of MnDOT 1801 are modified as follows:

S-2.1                For Projects in excess of \$50,000, the Contractor may sublet work only to subcontractors that meet the definition of “responsible contractor” in Minnesota Statutes §16C.285, subdivision 3. The Contractor is responsible for obtaining verifications of compliance with §16C.285 from subcontractors using a form provided by the Department. The Contractor must provide such verifications to the Department upon the Department’s request.

S-2.2                The third paragraph of MnDOT 1801 is modified to read:

On Contracts with Disadvantaged Business Enterprise (DBE), the Contractor's organization shall perform Work amounting to not less than 30 percent of the total original Contract Amount. The Department will deduct specialty items from the total original Contract Amount before calculating the amount of Work that the Contractor shall perform.

**STATE OF MINNESOTA - RESPONSIBLE CONTRACTOR CERTIFICATE**

Applies to all prime contracts in excess of \$50,000

A responsible contractor is defined in Minnesota Statutes §16C.285, subdivision 3.

Any prime contractor or subcontractor who does not meet the minimum criteria under Minnesota Statutes §16C.285, subdivision 3, or who fails to verify that it meets those criteria, is not a responsible contractor and is not eligible to be awarded a construction contract for the project or to perform work on the project.

A false statement under oath verifying compliance with any of the minimum criteria shall render the prime contractor or subcontractor that makes the false statement ineligible to be awarded a construction contract for the project and may result in termination of a contract awarded to a prime contractor or subcontractor that makes a false statement.

A prime contractor shall submit to the contracting authority upon request copies of the signed verifications of compliance from all subcontractors of any tier pursuant to subdivision 3, clause 7.

By signing this statement, I, \_\_\_\_\_(typed or printed name),  
\_\_\_\_\_(title) certify that I am an owner or officer of the company and do verify under oath that my company is in compliance with each of the minimum criteria listed in the law.

\_\_\_\_\_  
*(name of the person, partnership or corporation submitting this proposal)*

\_\_\_\_\_  
*(business address)*

Signed: \_\_\_\_\_  
*(bidder or authorized representative)* \_\_\_\_\_  
*Date*

## GENERAL CONDITIONS INDEX

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## **ARTICLE 1. Definitions**

The following words, phrases or terms hereinafter used in the agreement of any contract documents shall be interpreted according to each designated meaning as follows:

1.1 Addenda: Written or graphic instruments issued prior to the execution of the agreement which modify or interpret the contract documents, drawings and specifications, by additions, deletions, clarifications or corrections.

1.2 Agreement: The written agreement between the Owner and the Contractor covering the work to be performed, including all contract documents.

1.3 Bid Guaranty: The term means the security designated in the contract documents to be furnished by the bidder as a guaranty of good faith to enter into a contract with the Owner if the work is awarded to him.

1.4 Bid Proposal: The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the work to be performed.

1.5 Bidder: Any individual, partnership, or corporation submitting a proposal for the work to be completed.

1.6 Calendar Day: Every day shown on the calendar.

1.7 Change Order: A written order to the Contractor signed by the Owner authorizing an addition, deletion or revision in the work, or an adjustment in the contract price or the contract time issued after execution of this agreement.

1.8 Contract Bonds: Performance, labor and material payment bonds, maintenance or guarantee-instruments of security, furnished by the Contractor and his surety in accordance with the contract documents.

1.9 Contract Documents: The contract documents shall consist of the following:

- (1) Legal and Procedural Documents
  - a. Advertisements for Bids
  - b. Information for Bidders
  - c. Executed Bid Form
  - d. Executed Bid Guaranty
  - e. Executed Agreement
  - f. Executed Bond
  - g. Notice of Award
  - h. Notice to Proceed
- (2) Special Provisions
- (3) Technical Provisions
- (4) General Conditions
- (5) Executed Payment Forms

- (6) Drawing(s)
  - (7) All addenda issued by the Engineer prior to the time of the opening of the bids.
  - (8) Supplemental Agreements & Change Orders
- 1.10 Contract Price: The total monies payable to the Contractor under the contract documents.
- 1.11 Contract Time: The number of calendar days stated in the contract documents for the completion of the work.
- 1.12 Contractor: The individual, partnership, or corporation undertaking the execution of the work under the terms of the contract and acting directly or through a duly authorized representative.
- 1.13 Engineer: By the term "Engineer" is meant City Engineer for the City of Ramsey, who has been appointed by the Owner to take charge of the work contemplated by these specifications and accompanying drawings and is designated and referred to in these specifications as the "Engineer". (The Engineer or Owner may appoint an authorized representative or inspector, limited in authority, assigned to make inspection of the work performed and materials furnished by the Contractor. Such a representative has no authority to order or permit deviation from plans and specifications.)
- 1.14 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.
- 1.15 Final Completion: That date as certified by the Engineer when construction of the project is complete in accordance with the contract documents, such that all work has been paid, minus retainage.
- 1.16 Notice of Award: The written notice of the acceptance of the bid issued by the Owner to the Successful bidder.
- 1.17 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.
- 1.18 Owner: A private, public or quasi-public body or authority, corporation, association, partnership, or individual for whom the work is to be performed.
- 1.19 Plans: The term means the official drawings, plans, profiles, elevation, cross sections and supplemental drawings, or reproductions thereof, approved 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.
- 1.20 Project: The undertaking to be performed as provided in the contract documents.
- 1.21 Project Representative: The term means 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.

1.22 Shop Drawings: All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the Contractor, a subcontractor, manufacturer, supplier or distributor and which illustrate the equipment, material or some portion of the work.

1.23 Special Provisions: The term means contract requirements peculiar to the project which are not otherwise thoroughly or satisfactorily detailed and set forth in the standard detail specifications or plans.

1.24 Specifications: The term means 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.

1.25 Subcontractor: The term means those having a direct contract with the Contractor and it includes one who furnished materials worked to a special design according to the plans and specifications of this work, but does not include one who merely furnishes material so worked.

1.26 Substantial Completion: That date as certified in writing by the Engineer when the construction of the project or a specified part thereof is sufficiently complete in accordance with the contract documents for use by the Owner.

1.27 Supplemental General Conditions: Modification to the general conditions that supplement, add to, delete from or change the articles therein.

1.28 Surety: The Guarantor for the Contractor who, with the Contractor, signs an instrument or instruments known as the bond or bonds guaranteeing that the Contractor will fully comply with the plans, specifications and agreements.

1.29 Work: The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

### **Abbreviations**

**A.A.S.H.O.:** The American Association of State Highway Officials. All references to A.S.S.H.O. specifications or methods of tests shall be understood to refer to their latest published edition of the "Standard Specifications for Highway Materials and Methods of Sampling and Testing".

**A.N.S.I.:** American National Standards Institute, Inc. All references to A.N.S.I. specifications shall be understood to refer to their latest published edition.

**A.S.A.:** The American Standards Association. All references to A.S.A. specifications shall be understood to refer to their latest published edition.

**A.S.T.M.:** The American Society for Testing Materials. All references to A.S.T.M. specifications or methods shall be understood to refer to their latest published edition of the A.S.T.M. Standards.

**A.W.W.A.:** The American Water Works Association. All references to A.W.W.A. specifications shall be understood to refer to their latest published edition.

**MnDOT:** The Minnesota Department of Transportation. All references to MnDOT specifications shall be understood to refer to their latest published edition.

**M.S.S.:** Minnesota State Statutes. All references to M.S.S. shall be understood to refer to the latest published edition.

## **ARTICLE 2. Progress and Submission Schedule; Pre-Construction Conference; Time of Starting Work**

2.1 Within 10 Calendar Days after execution of this Agreement, the Contractor shall prepare and submit to the Engineer for review an estimated progress schedule indicating the starting and completion dates of the various stages of the Work and a schedule of Shop Drawing submissions.

2.2 Before starting the Work, a conference will be held to review the above schedules, to establish procedures for handling Shop Drawings and other submissions and to establish a working understanding between the parties as to the Project. Present at the conference will be the Engineer, Project Representative, the Contractor, his superintendent, the Owner and any others who may have an interest in the Project.

2.3 Prior to starting the Work, the Contractor will furnish the Engineer certificates of insurance as required by the appropriate provisions of the Contract Documents.

2.4 The Work contemplated hereunder shall be commenced within ten (10) Calendar Days after receipt by the Contractor of written Notice to Proceed from the Engineer and shall be completed within the time limits set forth in the Special Provisions or as specified elsewhere in the Contract Documents.

2.5 If the Contractor is delayed in the performance of the Work by any neglect of Owner or Engineer, or by an employee, agent or representative of either, or by changes ordered in the Work, or by the combined action of workmen (either those employed on the Work or in any industry essential to the conduct of the Work) in no way caused by or resulting from the default or collusion on the part of the Contractor, or by strikes, lockouts, embargoes, fire, unavoidable casualties, unusual delays in transportation, national emergency, or by any other causes which Contractor could not reasonably control or circumvent, the scheduled completion date and interim completion dates shall be extended for a period equal to the length of such delay if within five Calendar Days after expiration of any such delay Contractor delivers to Engineer a written request for extension for such delay, and such request is approved by the Owner or Engineer, which approval shall not be unreasonably withheld by Owner or Engineer. In case of a continuing cause of delay of a particular nature, Contractor shall be required to make only one such request with respect thereto. Extension of time shall be the Contractor's sole remedy for any such delay (except for Contractor's right to terminate this Agreement pursuant to the provisions of Article 43 hereinafter), unless the same shall be caused by acts constituting intentional interference by the Owner or Engineer with Contractor's performance of the Work and where to the extent that such acts continue after Contractor's notice to Owner or Engineer of such interference. Owner's or Engineer's exercise of any of its rights under Article 20, Changes in the Work, regardless

of the extent or number of such changes, or Owner's exercise of any of its remedies of suspension of the Work, or requirement of correction or re-execution of any defective Work, shall not under any circumstances be construed as intentional interference with Contractor's performance of the Work.

2.6 All time limits stated in the Contract Documents are of the essence of the Agreement. The provisions of this Article shall not exclude recovery for damages (including compensation for additional professional services) for delay by either party.

### **ARTICLE 3. Plans and Specifications**

3.1 It is the intent of the Specifications and Plans to describe a complete Project to be constructed in accordance with the Contract Documents.

3.2 The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If the Contractor finds a conflict, error or discrepancy in the Contract Documents, he will call it to the Engineer's attention in writing before proceeding with the Work affected thereby. In resolving such conflicts, errors and discrepancies, the Contract Documents shall be given precedence in the following order: Agreement, Specifications, Plans. Within the Specifications, the order of precedence shall be as follows: Special Provisions, Addenda, General Conditions, Technical Specifications Provisions. Figure dimensions on Plans shall govern over scale dimensions, and detailed Plans shall govern over general Plans. Any Work that may reasonably be inferred from the Specifications or Plans as being required to produce the intended results shall be supplied whether or not it is specifically called for. Work, materials or equipment described in words which so applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.

### **ARTICLE 4. Detailed Drawings and Instructions**

4.1 Unless otherwise provided, the Contractor shall furnish all labor, materials, equipment, tools, transportation, supplies and incidentals which may be necessary to construct and complete the Work in accordance with the Contract Documents.

4.2 The Engineer will furnish to the Contractor with reasonable promptness additional instructions by means of drawings and/or otherwise necessary information for the proper execution of the Work when, in the opinion of the Engineer, such are required. All drawings and instructions shall be consistent with the Plans and Specifications, true developments thereof, and reasonably inferable therefrom. The Contractor shall do no Work without proper drawings and instructions. In giving such additional instructions, the Engineer shall have authority to make minor changes in the Work, not involving extra cost, and not inconsistent with the purpose of the Work.

4.3 The Contractor shall submit, with such promptness as to cause no delay in the Work or in that of any other Contractor, three (3) copies of all Shop (or setting) Drawings and schedules required for the Work of the various trades and the Engineer shall pass upon them with reasonable promptness. The Contractor shall make any corrections required by the Engineer, file with the Engineer two (2) corrected copies and furnish such other copies as may be needed. The Engineer's approval of such drawings or schedules shall not relieve the Contractor from responsibility for deviation from Plans or Specifications, unless the Contractor has, in writing, called the Engineer's attention to such deviation at the time of

submission, nor shall it relieve the Contractor from responsibility for errors of any sort in Shop Drawings or schedules.

4.4 Unless otherwise set forth in the Contract Documents or bidding documents, it shall be the Contractor's sole responsibility to determine subsoil conditions prior to the bidding of the job. If under the terms of the Contract Documents, the responsibility for subsoil conditions is with the Contractor, Contractor hereby represents that he has inspected the location or locations of the Work and has satisfied himself as to the condition thereof, including subsoil conditions, and that the Contract Price as set forth herein is just and reasonable compensation for all Work, including all foreseen or unforeseeable risks, hazards, and difficulties in connection therewith.

4.5 The Engineer will furnish and set stakes as may be necessary for the Contractor in order that the Contractor may construct the Work to the proper grade and alignment.

4.6 The Contractor shall carefully preserve benchmarks, reference points and stakes and, in case of willful or careless destruction, he shall be charged with the resulting expense and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.

4.7 The Engineer shall furnish such survey lines and grades as may be necessary for the proper control of the Work; but this shall not relieve the Contractor of responsibility for making careful and accurate measurements and for constructing the Work accurately to the lines furnished by the Engineer. The Contractor shall give the Engineer reasonable notice of his requirements for such survey lines and grade as the Contractor may require.

4.8 The Contractor shall furnish and place, as directed, all necessary guide boards and appurtenances and give such other incidental assistance at the Work site as may be required by the Engineer, for staking out the Work. The Contractor's working operations which interfere with the activities of the Engineer shall be temporarily suspended for such reasonable time as the Engineer may deem necessary. The Contractor shall carefully preserve the points furnished by the Engineer and shall receive no extra compensation for any materials or services furnished by the Contractor incidental to these operations of the Engineer.

#### **ARTICLE 5. Ownership and Copies of Documents, Record Documents and Security Thereof**

5.1 All Specifications, Plans and copies thereof furnished by the Owner, through the Engineer, shall remain the Owner's property. They shall not be used on another project, and, with the exception of those sets which have been signed in connection with the execution of the Agreement, shall be returned to the Owner upon completion of the Project.

5.2 The Owner, through the Engineer, will furnish to the Contractor up to three (3) copies of the Specifications and Plans as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

5.3 The Contractor will keep one record copy of all Specifications, Plans, Addenda, modifications, and Shop Drawings at the Work site in good order and annotated to show all changes made during the construction process. These shall be made available to the Engineer as the Project is completed.

## **ARTICLE 6. Patent Fees and Royalties**

The Contractor will pay all license fees and royalties and assume all costs incidental to the use of any invention, design, process or device which is the subject of patent rights or copyrights held by others. The Contractor will indemnify and hold harmless the Owner and the Engineer and anyone directly or indirectly employed by the Owner from and against all claims, damages, losses and expenses (including attorney's fees) arising out of any infringement of such rights during or after completion of the Work, and shall defend all such claims in connection with any alleged infringement of such rights.

## **ARTICLE 7. Work by Others and Subcontractors**

7.1 The Owner may perform additional work related to the Project or may let other direct contracts therefrom which shall contain general conditions similar to these. The Contractor will afford the other contractors who are parties to such direct contracts (or the Owner, if performing the additional work), reasonable opportunity for the introduction and storage of materials and equipment and the execution of work, and shall properly connect and coordinate the Work with other contractors.

7.2 If any part of the Contractor's Work depends upon the work of any such other contractor (or the Owner) for proper execution or results, the Contractor will inspect and promptly report to the Engineer in writing any defects or deficiencies in such work that render it unsuitable for such proper execution and results. The Contractor's failure to report shall constitute an acceptance of the other work as fit and proper for the relationship of his Work except as to defects and deficiencies which may appear in the other work after the execution of this Work.

7.3 The Contractor will do all cutting, fitting and patching of the Work that may be required to make several parts come together properly and fit to receive or be received by such other work. The Contractor will not endanger any work of others by cutting, excavating or otherwise altering other's work and will only cut or alter their work with the written consent of the Engineer.

7.4 Within 10 Calendar Days of execution of this Agreement, the Contractor will submit to the Engineer for acceptance a list of the names of Subcontractors and such other persons and organizations (including those who are to furnish materials or equipment fabricated to a special design) proposed for those portions of the Work for which the identity of the Subcontractors and other persons and organizations must be submitted as specified in the Contract Documents. Prior to the execution of the Work, the Engineer will notify the Contractor in writing if either the Owner or the Engineer, after due investigation, has reasonable objection to any Subcontractor, person or organization on such list. The failure of the Owner or the Engineer to make objection to any Subcontractor, person or organization on the list prior to the execution of the Work shall constitute an acceptance of such Subcontractor, person or organization. Acceptance of any such Subcontractor, person or organization shall not constitute a waiver of any right of the Owner or the Engineer to reject defective workmanship, material, equipment, employees of the Contractor, or Work, material or equipment not in conformance with the requirements of the Contract Documents.

7.5 If, prior to the commencing of the Work, the Owner or the Engineer has reasonable objection to and refuses to accept any Subcontractor, person or organization on such list, the Contractor may,

prior to such commencement, either 1) submit an acceptable substitute without an increase in his Contract Price or 2) withdraw his bid and forfeit his bid security. If, after the commencement of the Work, the Owner or the Engineer refuses to accept any Subcontractor, person or organization on such list, the Contractor will submit an acceptable substitute and the Contract Price shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall be issued; however, no such increase in the Contract Price shall be allowed in respect of any substitution unless the Contractor has acted promptly and reasonably in submitting a name with respect thereto prior to the execution of the Work.

7.6 The Contractor will not employ any Subcontractor (whether initially or as a substitute) against whom the Owner or the Engineer may have reasonable objection, nor will the Contractor be required to employ any Subcontractor against whom the Contractor has reasonable objection. The Contractor will not make any substitution for any Subcontractor who has been accepted by the Owner and the Engineer, unless the Engineer determines that there is good cause for doing so.

7.7 The Contractor will be fully responsible for all acts and omissions of his Subcontractors and of persons directly employed by them and of persons for whose acts any of them may be liable to the same extent that the Contractor is responsible for the acts and omissions of persons directly employed by the Contractor. Nothing in the Contract Documents shall create any contractual relationship between any Subcontractor and the Owner or the Engineer or any obligation on the part of the Owner.

7.8 The divisions and sections of the Specifications and the identifications of any Plans shall not control the Contractor in dividing the Work among Subcontractors or delineating the Work to be performed by any trade.

7.9 The Contractor agrees to specifically bind every Subcontractor to all of the applicable terms and conditions of the Contract Documents. Every Subcontractor, by undertaking to perform any of the Work, will thereby automatically be deemed to be bound by such terms and conditions.

7.10 All Work performed for the Contractor by a Subcontractor shall be pursuant to an appropriate agreement between the Contractor and the Subcontractor which shall contain provisions that waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by insurance provided in accordance with Contract Documents. The Contractor shall upon request from the Engineer provide copies of the written subcontract agreements to the Engineer. The Contractor will pay each Subcontractor a just share of any insurance monies received by the Contractor.

## **ARTICLE 8: Materials, Equipment and Labor; Substitute Material or Equipment**

8.1 The Contractor will provide and pay for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work.

8.2 The Contractor covenants that all Work shall be done in a good and workmanlike manner and that all materials furnished and used in connection therewith shall be new and approved by the Engineer, except as otherwise expressly provided for in the Plans and Specifications.

8.3 If it is indicated in the Specifications that the Contractor may furnish or use a substitute that is equal to any material or equipment specified, and if the Contractor wishes to furnish or use a proposed substitute, the Contractor will, promptly after the Notice of Award, make written application to the Engineer for approval of such a substitute certifying in writing that the proposed substitute will perform adequately the duties imposed by the general design, be similar and/or equal substance to that specified and be suited to the same use and capable of performing the same function as that specified. No substitute shall be ordered or installed without the written approval of the Engineer who shall be the judge of equality.

8.4 All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator or processors, except as otherwise specifically provided in the Contract Documents.

#### **ARTICLE 9. Errors, Omissions, Etc.**

Should it appear that the Work here intended to be done or any of the materials or matters relative thereto are not sufficiently detailed or explained on the Plans or in the Specifications, or should any error, discrepancy or inconsistency appear between any of the Plans and the Specifications, the Engineer shall furnish additional drawings, details or explanations and shall have power to interpret, correct, adjust and explain all errors, omissions, discrepancies, doubts and misunderstandings between such Plans and Specifications, or between several drawings and Specifications, or between several drawings, and the decision of the Engineer therein shall be final and conclusive.

#### **ARTICLE 10. Permits Laws Taxes and Regulations**

10.1 The Contractor will secure and pay for all construction permits and licenses and will pay all governmental and public utility charges and inspection fees necessary for the performance of the Work.

10.2 If the Contractor observes that the Specifications or Plans are at variance therewith, the Contractor will give the Engineer prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate modification. If the Contractor performs any of the Work knowing or when with the exercise of due care he should have known, it be contrary to any such laws, ordinances, rules and regulations applicable to said Work and fails to give the Owner or Engineer notice thereof prior to the performance thereof, Contractor shall bear all costs, including reasonable attorney's fees, arising therefrom. Further, Contractor shall observe and abide by and perform all of its obligations hereunder in accordance with all applicable laws, rules and regulations of all governmental authorities having jurisdiction, including the Federal Occupational, Safety and Health Act. Contractor agrees to take affirmative action to not discriminate against any employee or applicant for employment because of race, creed, color or national origin. To the extent applicable, Contractor will comply with all provisions of any executive orders and any rules, regulations, orders, instructions, designations and other directives promulgated by any governmental unit with jurisdiction thereof. Violation of this

provision, after notice, shall be a material breach of this Agreement and may result, at the Owner's option, in a termination or suspension of this Agreement in whole or in part.

10.3 The Contractor will pay all sales, consumer, use and other similar taxes required by the law of the place where the Work is to be performed.

#### **ARTICLE 11. Availability of Lands; Physical and Subsurface Conditions; Reference Points**

11.1 The Owner will provide, as indicated in the Contract Documents and not later than the date when needed by the Contractor, the lands upon which the Work is to be done, rights-of-way for access thereto, and such other lands which are designated for the use of the Contractor, the Contractor will provide all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

11.2 The Contractor will properly notify the Owner and Engineer in writing of any subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents. The Engineer will promptly investigate those conditions and advise the Owner in writing if further surveys or subsurface tests are necessary. Promptly thereafter, the Owner will obtain the necessary additional surveys and tests and furnish copies to the Engineer and the Contractor. If the Engineer finds that the results of such surveys or tests indicate subsurface or latent physical conditions differing significantly from those indicated in the Contract Documents, a Change Order shall be issued incorporating the necessary revisions.

11.3 The Engineer will establish such general reference points as in his judgment will enable the Contractor to proceed with the Work. The Contractor will be responsible for the layout of the Work and will protect and preserve the established reference points and will make no changes or relocations without the prior written approval of the Owner and Engineer. He will report to the Engineer whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations. The Contractor will replace and accurately relocate all reference points so lost, destroyed or moved.

#### **ARTICLE 12. Use of Premises**

12.1 The Contractor will confine his equipment, the storage of materials and equipment and the operations of his workmen to areas permitted by law, ordinances, permits or the requirements of the Contract Documents, and shall not unreasonably encumber the premises with materials or equipment.

12.2 The Contractor will not load nor permit any part of the structure to be loaded with weights that will endanger the structure, nor will he subject any part of the Work to stresses or pressures that will endanger it.

#### **ARTICLE 13. Engineer's Status During Construction**

13.1 The Engineer shall be the Owner's representative during the construction period. All instructions of the Owner to the Contractor shall be issued through the Engineer. The duties and responsibilities and the limitations of authority of the Engineer as the Owner's representative during

construction are set forth in all Articles of these General Conditions and shall not be extended without written consent of the Owner and the Engineer.

13.2 The Engineer will make regular visits to the Work site to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. The Engineer's efforts will be directed toward providing assurance for the Owner that the completed Project will conform to the requirements of the Contract Documents. On the basis of the Engineer's on-site observations as an experienced and qualified design professional, he will advise the Owner as to the progress of the Work and the performance of the Contractor.

13.3 The Engineer will have authority to disapprove of or reject Work which is defective; i.e., is unsatisfactory, faulty or defective, or does not conform to the requirements of the Contract Documents or does not meet the requirements of any inspection, test or approval. The Engineer will also have authority to require special inspection or testing of the Work whether or not the Work is fabricated, installed or completed.

13.4 The Engineer will provide one or more full-time resident Project Representatives to assist the Engineer in carrying out his responsibilities at the Work site during construction activity. The duties, responsibilities and limitations of authority of any such resident project representative shall be as set forth in the pre-construction meeting held by the Engineer.

13.5 Neither the Engineer's authority to act under this article nor any decision made by him in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of the Engineer to the Contractor, any Subcontractor, any of their agents or employees or any other person performing any of the Work.

#### **ARTICLE 14. Engineer's Interpretations and Decisions**

14.1 The Engineer will issue with reasonable promptness such written clarifications or interpretations to be consistent with or reasonably inferable from the overall intent of the Contract Documents.

14.2 The Engineer will be the initial interpreter of the terms and conditions of the Contract Documents and the judge of the performance thereunder. In his capacity as interpreter and judge, the Engineer will exercise his best efforts to insure faithful performance by the Contractor. The Engineer will not show partiality and shall not be liable for the result of any interpretation or decision rendered in good faith. Claims, disputes and other matters relating to the execution and progress of the Work or the interpretation of or performance under the Contract Documents shall be referred initially to the Engineer for decision, which the Engineer shall render in writing within a reasonable time.

#### **ARTICLE 15. Shop Drawings and Samples**

15.1 After checking and verifying all field measurements, the Contractor will submit to the Engineer for approval, in accordance with the accepted schedule of Shop Drawing submissions, five copies (or at the Engineer's option, one reproducible copy) of all Shop Drawings, which shall have been checked by and stamped with the approval of the Contractor and identified as the Engineer may require. The

data shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction and the like to enable the Engineer to review the information as required.

15.2 The Contractor will also submit to the Engineer for approval, with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and stamped with the approval of the Contractor, identified clearly as to material, manufacturer, any pertinent catalog numbers and the use for which intended.

15.3 At the time of each submission, the Contractor will, in writing, call the Engineer's attention to any deviations that the Shop Drawing or sample may have from the requirements of the Contract Documents.

15.4 The Engineer will check and approve with reasonable promptness Shop Drawings and samples; however, checking and approval shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents. The approval of a separate item as such will not indicate approval of the assembly in which the item functions. The Contractor will make any corrections required by the Engineer and will return the required number of corrected copies of Shop Drawings and resubmit new samples until approved. The Contractor shall direct specific attention in writing or on resubmitted Shop Drawings to revisions other than the corrections called for by the Engineer on previous submissions.

15.5 No Work requiring a Shop Drawing or sample submission shall be commenced until the submission has been approved by the Engineer.

15.6 The Engineer's approval of Shop Drawings or samples shall not relieve the Contractor from his responsibility for any deviations from the requirements of the Contract Documents unless the Contractor has in writing called the Engineer's attention to such deviations at the time of submission and the Engineer has given written approval to the specific deviation, nor shall any approval by the Engineer relieve the Contractor from responsibility for errors or omissions in the Shop Drawings.

## **ARTICLE 16. Tests and Inspections**

16.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to specifically be inspected, tested, or approved by someone other than the Contractor, the Contractor will give the Engineer timely notice of readiness thereof. The Contractor will give the Engineer the required certificates of inspection, testing or approval. All such tests will be in accordance with the methods prescribed by the American Society for Testing and Materials or such other applicable organization as may be required by law or the Contract Documents. If any such Work required so to be inspected, tested, or approved is covered up without written approval or consent of the Engineer, it must, if directed by the Engineer, be uncovered at the Contractor's expense for observation. The cost of all such inspections, test and approvals shall be borne by the Owner unless otherwise provided.

16.2 Any Work which fails to meet the requirements of any such test, inspection or approval and any Work which meets the requirements of any such test or approval but does not meet the requirements of the Contract Documents shall be considered defective. Such defective Work may be rejected, corrected

or accepted as provided elsewhere in the Contract Documents. The costs of all retests and follow up inspections shall be borne by the Contractor.

16.3 Neither observations by the Engineer nor inspections, tests or approvals by persons other than the Contractor shall relieve the Contractor from his obligations to perform the Work in accordance with the requirements of the Contract Documents.

## **ARTICLE 17 Contractor's Supervision and Superintendence**

17.1 The Contractor will supervise and direct the Work efficiently and with skill and attention. The Contractor will be solely responsible for the means, methods, techniques, sequences and procedures of construction. Before undertaking the Work the Contractor will carefully study and compare the Contract Documents and check and verify all figures shown thereon and all field measurements. The Contractor will at once report in writing to the Engineer any conflict, error or discrepancy which he may discover. The Contractor will be responsible to see that the finished Work complies accurately with the Contract Documents.

17.2 The Contractor will keep on the Work site at all times during its progress a resident superintendent satisfactory to the Engineer. The superintendent shall not be replaced without the consent of the Engineer except under extraordinary circumstances. The superintendent will be the Contractor's representative at the site and shall have authority to act on behalf of the Contractor. All communications given to the superintendent shall be as binding as if given to the Contractor.

17.3 The Contractor will provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. He will at all times maintain good discipline and order among his employees and the employees of his Subcontractors at the Work site.

17.4 The Engineer and/or Owner will not be responsible for the acts or omissions of the Contractor, or any Subcontractors, or any agents or employees or any other persons performing any of the Work.

## **ARTICLE 18. Safety and Protection: Emergencies**

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

18.1.1 All employees on the Work and other persons who may be affected thereby;

18.1.2 All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the Work site; and

18.1.3 Other property at the Work site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

18.2 The Contractor will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. The Contractor will erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection, including posting danger signs and other warnings against hazards and promulgating safety regulations. The Contractor will notify owners of adjacent utilities when execution of Work may affect them. When the use or storage of explosives or other hazardous materials is necessary for the performance of the Work, the Contractor will exercise the utmost care and will carry on such activities under the supervision of properly qualified personnel. All damage, injury or loss to any property referred to in this paragraph caused, directly or indirectly, in whole or in part, by the Contractor, or Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, will be remedied by the Contractor, except damage or loss attributable to the fault of Plans or Specifications or to the acts or omissions of the Owner or the Engineer or anyone employed by either of them or for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor.

18.3 The Contractor will designate a responsible employee at the Work site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated in writing by the Contractor to the Owner and the Engineer.

18.4 In emergencies affecting the safety of persons or the Work or property at the Work site or adjacent thereto, the Contractor, without special instruction or authorization from the Engineer, is obligated to act, at his discretion, to prevent threatened damage, injury or loss. The Contractor will give the Engineer prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby, and a Change Order shall thereupon be issued covering the changes and deviations involved if said emergency is not a direct cause of the neglect of the Contractor or Subcontractor or a deviation by the Contractor from any of the provisions of the Contract Documents.

## **ARTICLE 19. Access to the Work: Uncovering Finished Work**

19.1 The Engineer will at all times have access to the Work. The Contractor will provide proper facilities for such access and observation of the Work and also for any inspection, or testing thereof by others.

19.2 If any Work is covered contrary to the request of the Engineer, it must, if requested by the Engineer, be uncovered for observation and replaced at the Contractor's expense.

19.3 If any Work has been covered which the engineer has not specifically requested to observe prior to its being covered, or if the Engineer considers it necessary or advisable that covered Work be inspected or tested by others, the Contractor, at the Engineer's request, will uncover, expose or otherwise make available for observation, inspection or testing as the Engineer may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such

Work is defective or does not meet the requirements of the Contract Documents, the Contractor will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, including compensation for additional professional services, and an appropriate Change Order shall be issued depicting all such costs from the Contract Price. If, however, such Work is found to be non-defective and meets the requirements of the Contract Documents, the Contractor will be allowed an increase in the Contract Price or extension of the Contract Time directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction, provided the Engineer first obtained uncovering approval from the Owner.

## **ARTICLE 20. Changes in the Work**

20.1 Without invalidating the Agreement, the Owner may, at any time or from time to time, order additions, deletions or revisions in the Work; these will be authorized by Change Orders. Upon receipt of a Change Order, the Contractor will proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, an equitable adjustment will be made as provided in the Contract Documents.

20.2 The Engineer may authorize minor changes or alterations in the Work not involving extra cost and not inconsistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order.

20.3 Additional Work performed by the Contractor without authorization of a Change Order will not entitle him to an increase in the Contract Price or an extension of the Contract Time, except in the case of an emergency as provided in elsewhere herein.

20.4 The Owner will execute any appropriate Change Order prepared by the Engineer covering changes in the Work to be performed and work performed in an emergency and any other claim of the Contractor for a change in the Contract Time or the Contract Price which is approved by the Owner and Engineer.

20.5 It is the Contractor's responsibility to notify his Surety of any changes affecting the general scope of the Work or changes in the Contract Price and the amount of the applicable bonds shall be adjusted accordingly. The Contractor will furnish proof of such adjustment to the Engineer upon its occurrence.

## **ARTICLE 21. Change of the Contract Price**

21.1 The Contract Price constitutes the total compensation payable to the Contractor for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by the Contractor shall be at the Contractor's expense without change in the Contract Price.

21.2 The Contract Price may only be changed by a Change Order. If the Contractor is entitled by the Contract Documents to a change in the Contract Price, the claim shall be in writing delivered to the Engineer within five (5) calendar days of the occurrence of the event giving rise to the claim. All valid

claims for adjustments in the Contract Price shall be determined by the Engineer. Any change in the Contract Price resulting from any such claim shall be incorporated in a Change Order.

21.3 The value of any Work covered by a Change Order or of any claims for a change in the Contract Price shall be determined in one of the following ways:

21.3.1 Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved;

21.3.2 By mutual acceptance of a lump sum;

21.3.3 By cost and a mutually acceptable fixed amount for overhead and profit;

21.3.4 If none of the above methods is agreed upon, the value shall be determined by the Engineer on the basis of costs and a percentage for overhead and profit. Costs shall only include labor (payroll, payroll taxes, fringe benefits, workmen's compensation, etc.), materials, equipment, directly related to the Work involved. The maximum percentage which shall be allowed for Contractors combined overhead and profit shall be as follows:

21.3.4.1 For all such Work done by his own organization, the Contractor may add up to fifteen percent (15%) of actual net costs for combined overhead and profit; provided that no overhead or profit shall be allowed on costs incurred in connection with premiums for public liability insurance or other special insurance directly related to such Work. In such case and also under this paragraph, the Contractor will submit in the form prescribed by the Engineer, an itemized cost breakdown together with supporting data.

21.4 The amount of credit to be allowed by the Contractor to the Owner for any such changes in cost, will be the amount of the actual net cost plus fifteen percent (15%).

## **ARTICLE 22. Change of Contract Time**

22.1 The Contract Time may only be changed by a Change Order. If the Contractor is entitled by the Contract Documents to make a claim for an extension in the Contract Time, the claim shall be in writing delivered to the Engineer within five (5) calendar days after expiration of any such delay of the occurrence of the event giving rise to the claim. All valid claims for adjustment in the Contract Time shall be determined by the Engineer. Any change in the Contract Time resulting from any such claim shall be incorporated into a Change Order.

22.2 The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of the Contractor, if he makes a claim therefrom as provided in this Agreement. Such delays shall include, but not be restricted to, acts or neglect by any separate Contractor employed by the Owner, fires, floods, labor disputes, epidemics, abnormal weather conditions, or acts of God.

22.3 All time limits stated in the Contract Documents are of the essence of the Agreement. The provisions of this Article shall not exclude recovery for damages (including compensation for additional professional services) for delay by either party.

### **ARTICLE 23. Neglected Work**

If the Contractor should neglect to prosecute the Work in accordance with the Contract Documents, including any requirements of the progress schedule, the Owner, after five (5) Calendar Day's written notice to the Contractor may, without prejudice to any other remedy, make good such deficiencies and the cost thereof (including compensation for additional professional services) shall be charged against the Contractor, in which case a Change Order shall be issued incorporating the necessary revisions in the Contract Documents including an appropriate reduction in the Contract Price. If the payments then or thereafter due to the Contractor are not sufficient to cover such amount, the Contractor will pay the difference to the Owner.

### **ARTICLE 24. Warranty and Guarantee: Correction, Removal or Acceptance of Defective Work**

24.1 The Contractor warrants and guarantees to the Owner that all materials and equipment will be new unless otherwise specified and that all Work will be of good quality and free from faults or defects and in accordance with the requirements of the Contract Documents and of any inspections, tests or approvals referred to elsewhere in the Contract Documents. All unsatisfactory Work, all faulty or defective Work and all Work not conforming to the requirements of the Contract Documents or of such inspections, tests or approvals shall be considered defective. Prompt notice of all defects shall be given to the Contractor. All defective Work, whether or not in place, may be rejected.

24.2 If required by the Engineer, prior to approval of final payment, the Contractor will promptly, without cost to the Owner and as required by the Engineer, either correct any defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by the Engineer, remove it from the Work site and replace it with non-defective Work. If the Contractor does not correct such defective Work or remove and replace such rejected Work within a reasonable time, all as required by written notice from the Engineer, the Owner may have the deficiency corrected or the rejected Work removed and replaced. All direct or indirect costs of such correction or removal and replacement, including compensation for additional professional services shall be paid by the Contractor, and an appropriate Change Order shall be issued deducting all such costs from the Contract Price. The Contractor will also bear the expenses of making good all Work of others destroyed or damaged by his correction, removal or replacement of his defective Work.

24.3 If, after the approval of final payment and prior to the expiration of one (1) year after the date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any Work is found to be defective, the Contractor will, promptly, without cost to the Owner and in accordance with the Owner's written instructions, either correct such defective Work, or, if it has been rejected by the Owner, remove it from the Work site and replace it with non-defective Work. If the Contractor does not promptly comply with the terms of such instructions, the Owner may have the defective Work corrected or the

rejected Work removed and replaced, and all direct and indirect costs of such removal and replacement, including compensation for additional professional services, will be paid by the Contractor.

24.4 If, instead of requiring correction or removal and replacement of defective Work, the Owner (prior to approval of final payment) and also the Engineer prefer to accept it, they may do so. In such case, if acceptance occurs prior to approval of final payment, a Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including appropriate reduction in the Contract Price; or, if the acceptance occurs after approval of final payment, an appropriate amount shall be paid by the Contractor.

## **ARTICLE 25. Application for Partial Payment**

25.1 Prior to the first Friday of the following month for which payment is to be requested, the Contractor shall submit to the Engineer a detailed estimate of the amount earned for the separate portions of the Work for the previous month, and request payment. As used in this Article, the words "amount earned" means the value, on the date of the estimate for partial payment, of the Work completed in accordance with the Contract Documents, and the value of approved materials delivered to the Project site suitably stored and protected prior to incorporation into the Work. If the Contractor's estimate of amount earned conforms with the Engineer's evaluation, the Engineer will calculate the amount due the Contractor and make recommendation to the Owner for payment.

25.2 After deducting the retain amounts and the amount of all previous partial payments made to the Contractor, the amount earned as of the end of the previous month will be made payable to the Contractor after the fourth Tuesday of the following month.

25.3 The Contractor warrants and guarantees that title to all Work, materials and equipment covered by an application for payment, will have passed to the Owner prior to the making of the application for payment free and clear of all liens, claims, security interests and encumbrances (hereafter in these General Conditions referred to as "liens"); and that no Work, materials or equipment covered by an application for payment will have been acquired by the Contractor or by any other person performing the Work at the Work site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

25.4 The Engineer will, within fifteen (15) Calendar Days after receipt of application for payment, either indicate in writing his approval of payment and present the application to the Owner, or return the application to the Contractor indicating in writing his reasons for refusing to approve payment. In the latter case, the Contractor may make the necessary corrections and resubmit the application. The Owner will pay the Contractor the amount approved by the Engineer and Owner.

## **ARTICLE 26. Prompt Payment to Subcontractors**

The Contractor shall pay any subcontractor within ten days of the prime contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The contract must require the prime contractor to pay interest of 1 ½ 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 or more is \$10. For an unpaid balance of less than \$100, the prime contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a prime contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

## **ARTICLE 27. Approval of Payment**

27.1 The Engineer's approval of any payment requested in an application for payment shall constitute a representation by the Engineer to the Owner, based on the Engineer's on-site observations of the Work in progress as an experienced and qualified design professional and on their review of the application for payment and the supporting data, that the Work has progressed to the point indicated; that, to the best of their knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning Project upon completion, to the results of any subsequent tests called for in the Contract Documents and any qualifications stated in his approval); and that the Contractor is entitled to payment of the amount approved.

27.2 The Engineer's approval of final payment shall constitute an additional representation by the Engineer to the Owner that the conditions precedent to the Contractor's being entitled to final payment as set forth in the Agreement have been fulfilled.

27.3 The Engineer may refuse to approve the payment if, in the Engineer's opinion, the Engineer is unable to make such representations to the Owner. They may also refuse to approve any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously approved, to such extent as may be necessary in their opinion to protect the Owner from loss because:

27.3.1 The Work is defective;

27.3.2 Claims have been filed or there is reasonable evidence to suggest such filing thereof;

27.3.3 The Contract Price has been reduced because of modifications or changes;

27.3.4 The Owner has been required to correct defective Work or complete the Work;

27.3.5 Unsatisfactory performance of the Work, including failure to clean up.

## **ARTICLE 28. Project Completion**

28.1 Prior to final payment, the Contractor may, in writing to the Owner and the Engineer, certify that the entire Project is complete and request that the Engineer issue a certificate of completion. Within a reasonable time thereafter, the Owner, Contractor and Engineer will make an inspection of the Project to determine the status of completion. If the Engineer and Owner do not consider the Project complete, they will notify the Contractor in writing giving reasons thereof. If the Engineer and Owner consider the Project complete, they will prepare and deliver to the Owner an application for final payment.

28.2 The Owner shall have the right to exclude the Contractor from the Project after the date of completion, but the Owner will allow the Contractor reasonable access to complete or correct items of repair and maintenance.

## **ARTICLE 29. Final Payment**

29.1 After the Contractor has completed any corrections to the satisfaction of the Engineer and delivered all maintenance and operating instruction, schedules, guarantees, bonds, certificates of inspection and other documents, all as required by the Contract Documents, he may make application for final payment. The final application for payment shall be accomplished by such supporting data as the Engineer may require, together with complete and legally effective releases or waivers (satisfactory to the Owner) of all liens arising out of the Contract Documents and the labor and services performed and the material and equipment furnished thereunder. In lieu thereof and as approved by the Owner, the Contractor may furnish receipts of releases in full; an affidavit of the Contractor that the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and that all payrolls, State and Federal withholding taxes, material and equipment bills, and other indebtedness connected with the Work for which the Owner or his property might in any way be responsible, have been paid or otherwise satisfied; and consent of the Surety, if any, to final payment. If any Subcontractor or supplier fails to furnish a release or receipt in full, the Contractor may furnish a bond satisfactory to the Owner to indemnify him against any lien.

29.2 If, on the basis of his observation and review of the Work during construction, his final inspection and his review of the final application for payment all as required by the Contract Documents, the Engineer is satisfied that the Work has been completed and the Contractor has fulfilled all of his obligations under the Contract Documents, he will, within fifteen (15) Calendar Days after receipt of the final application for payment, indicate in writing his approval of payment and present the application to the Owner for payment. Otherwise, he will return the application to the Contractor, indicating in writing his reasons for refusing to approve final payment, in which case the Contractor will make the necessary corrections and resubmit the application. The Owner, will, within twenty (20) Calendar Days of presentation of an approved application for payment, and receipt of final payment documents pay the Contractor the amount approved by the Engineer.

## **ARTICLE 30. Retention of a Portion of the Contract Sum**

The Owner may retain up to a maximum of ten percent (10%) of value of Work completed and requested for payment. After fifty percent (50%) of the Work has been completed, the Contractor may request consideration for a reduction in the retained amount. Where the Owner is subject to the provisions of Minnesota State Statutes 429.041 the maximum retained amount shall be five percent (5%) released with approval of the governing body. Those amounts released shall be considered not required to be retained to protect the Owner's interest in satisfactory completion of the Agreement.

## **ARTICLE 31. Liquidated Damages**

The parties hereto recognize that failure on the part of the Contractor to complete the Work within the time period set forth herein above, shall cause damage to the Owner; and should the contractor not complete the Work within that period of time, or otherwise be guilty of substantial violation of this Agreement, the Owner may deduct amounts per the following schedule per calendar day after the completion date and all legal and Engineering costs related thereto, for each day exceeding said completion date, from the total Contract Price to be paid to the Contractor, and among its other

remedies, terminate this Agreement and complete the Work by whatever method the Owner may deem expedient, at the expense of the Contractor; and such action by Owner shall not relieve Contractor of its liability to Owner for any damages caused by the Contractor's default, including, but not limited to, the excess expense of finishing the Work over the unpaid balance of the Contract Price. In the event a dispute arises between the Contractor and Owner regarding an alleged default by the Contractor or the assessment of liquidated damages, and if said dispute is submitted for litigation, and in the further event that the Owner prevails thereon, liquidated damages shall include court costs and reasonable attorney's fees as allowed by law. In the event the Owner elects to complete the Work following Contractor's default as above set forth, the Contractor agrees to extend its full cooperation of the Work contemplated under this Agreement. The amount deducted under this paragraph shall not be construed as a penalty, but rather as liquidated damages resulting from the noncompletion of the Work within the specified time. The schedule of damages shall be as specified below based upon the original contract amount:

<i>From More Than</i>	<i>Up To and Including</i>	<i>Charge per Calender Day</i>
\$0	\$500,000	\$200
\$500,000	\$1,000,000	\$300
\$1,000,000	Unlimited	\$500

**ARTICLE 32. Waivers of Claims and Continuing Obligations**

32.1 The Contractor's obligation to perform the Work and complete the Project in accordance with the Contract Documents shall be absolute. Neither approval of any payment by the Engineer, nor the issuance of a certificate of completion, nor any payment by the Owner to the Contractor under the Contract Documents, nor any use or occupancy of the Project or any part thereof by the Owner, nor any act of acceptance by the Owner nor any failure to do so, nor any correction of faulty or defective Work by the Owner shall constitute an acceptance of Work not in accordance with the Contract Documents.

32.2 The making and acceptance of payments shall constitute:

32.2.1 A waiver of all claims by the Owner against the Contractor other than those arising from unsettled liens, from faulty or defective Work appearing after final payment or from failure to comply with the requirements of the Contract Documents or the terms of any special guarantees specified therein; and

32.2.2 A waiver of all claims by the Contractor against the Owner other than those previously made in writing and still unsettled.

**ARTICLE 33. Indemnification**

33.1 To the fullest extent permitted by law, the Contractor shall indemnify and save harmless, the Owner and Engineer of and from loss or damage caused to any person or property by reasons of any carelessness or neglect in the doing or making of this improvement or furnishing of material and by reason or failure to pay all laborers, materials, mechanics, and subcontractors, and all persons who shall supply said Contractor with materials, provisions and supplies for the performance and completion of said Agreement to promptly pay all just debts, dues and demands incurred in the performance of said Agreement, and of and from all expenses of inspection and/or of whatever kind of nature, which shall

be caused by delay or failure in the performance and completion of this Agreement, and further to indemnify and save harmless of and from all suits and action of the Owner and Engineer on account of any injuries or damages sustained by any person or persons by reason of any act, omission, or negligence or by the use of improper or defective materials on the part of said Contractor in the performance of any part of this Agreement, and further to indemnify and protect and save the Owner and Engineer harmless against any or all demands, fees, or royalties for any patented invention, materials, methods, arrangements, or process of manufacturer of any infringement thereon, that may be used or be in any manner connected with the construction, erection, or maintenance of the Work, material, or any part thereon encompassed by this Project.

33.2 The Contractor shall indemnify and hold harmless the Owner and the Engineer and their agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

33.3 In any and all claims against the Owner or the Engineer of any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them be liable, the indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or from the Contractor or any Subcontractor under Worker's Compensation acts, disability benefit acts or other employee benefit acts.

33.4 The obligations of the Contractor under this Article shall not extend to the liability of the Engineer, his agents or employees arising out of (a) the preparation or approval or maps, drawings, opinions, reports, surveys, Change Orders, designs or Plans and Specifications or (b) the giving of or the failure to give directions or instructions by the Engineer, his agents or employees, provided such giving or failure to give is the primary cause of injury or damage.

#### **ARTICLE 34. Contract Bonds**

The Contractor will furnish performance, payment and maintenance bonds as security for the faithful performance, payment and maintenance of all his obligations under the Contract Documents. These bonds shall be in amounts of at least 100% of the Contract Price and in such form and with such Sureties as approved by the Securities Exchange and by the Insurance Commissioner of the State in which the Project is located. Prior to execution of the Contract Documents, the Owner may require the Contractor to furnish such other bonds, in such form and with such Sureties as he may require.

#### **ARTICLE 35. Insurance**

35.1 The Contractor shall provide (from insurance companies acceptable to the Owner) the insurance coverage designated hereinafter and pay all costs.

35.2 Before commencing Work under this Agreement, the Contractor shall furnish the Owner with certificates of insurance specified herein showing the type, amount, class of operations covered, effective dates, and date of expiration of policies, and containing substantially the following statement:

"The insurance covered by this certificate will not be cancelled or materially altered, except after 10 days written notice has been received by the Owner."

35.3 In case of the breach of any provision of this Article, the Owner, at his option, may take out and maintain, at the expense of the Contractor, such insurance as the Owner may deem proper and may deduct the cost of such insurance from any monies which may be due or become due the Contractor under this Agreement.

#### **ARTICLE 36. Contractor and Subcontractor Insurance**

The Contractor shall not commence Work on this Agreement until he has obtained all the insurance and it has been reviewed by the Owner, nor shall the Contractor allow any Subcontractor to commence Work on his subcontract until all similar insurance required for that portion of the Work has been so obtained and reviewed. Review of the insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder.

#### **ARTICLE 37. Compensation and Employer's Liability Insurance**

The Contractor shall maintain during the life of this Agreement the statutory Worker's Compensation, in addition to, Employer's Liability Insurance in an amount not less than \$100,000 for each occurrence and a combined single limit of liability of \$1,000,000 for each occurrence for all of his employees to be engaged in Work on the Project under this Agreement and, in case any such Work is sublet, the Contractor shall require the Subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the latter's employees to be engaged in such Work. Where Work under this Agreement includes any water or navigational exposure, coverage shall be included to cover the Federal Longshoremen's and Harborworker's Act and the Federal Jones Act.

#### **ARTICLE 38. Public Liability (including Automotive) and Property Damage Insurance**

38.1 The Contractor shall maintain during the life of this Agreement such public liability and property damage insurance and automobile public liability and property damage insurance and shall protect him, the Owner, the Engineer, and any Subcontractor performing Work covered by this Agreement from claims for damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from negligent operations under this Agreement, whether such operations are by himself or by any Subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall be not less than:

(1) Public liability insurance in an amount not less than \$500,000 for injuries, including wrongful death to any one person, and subject to the same limit for each person in an amount not less than \$1,000,000 for each occurrence.

(2) "Broad Form" property damage liability insurance in an amount not less than \$500,000 for each occurrence.

38.2 The Contractor's public liability insurance and property damage insurance shall provide the primary coverage on all claims arising out of the performance of the Agreement, and shall name the Owner, its officers, agents and employees, and the Engineer as additional insureds therein.

#### **ARTICLE 39. Builders Risk All Risk Insurance**

Unless otherwise modified in the Special Provisions, the Contractor shall secure and maintain during the life of this Agreement, Builders Risk All Risk Insurance coverage for 100 percent of the Contract Price. Such insurance shall not exclude coverage for earthquake, landslide, flood, collapse, or loss due to the results of faulty workmanship, and shall provide for losses to be paid to the Contractor and the Owner as their interest may appear.

#### **ARTICLE 40. Insurance Coverage for Special Conditions**

When the construction is to be accomplished within a public or private right-of-way requiring insurance coverage, the Contractor shall conform to the particular requirements and provide the required insurance. The Contractor shall include in his liability policy all endorsements that the said authority may require for the protection of the authority, its officers, agents and employees. Insurance coverage for special conditions, when required, shall be provided as set forth in the Special Provisions.

#### **ARTICLE 41. Cleaning Up**

The Contractor will keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work, and at the completion of the Work he will remove all waste materials, rubbish and debris from and about the premises and will remove all items of personal property such as all tools, construction equipment and machinery, and surplus materials, and further will leave the site broom-clean and ready for occupancy by the Owner. The Contractor will restore to the original condition those portions of the Work site not designated for alteration by the Contract Documents.

#### **ARTICLE 42. Owner's Right to Stop or Suspend Work**

42.1 If the Work is defective, or the Contractor fails to supply sufficiently skilled workmen or suitable materials or equipment, or if the Contractor fails to make prompt payments to Subcontractors, or for labor, materials or equipment, the Owner may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

42.2 The Owner may, at any time and without cause, suspend the Work or any portion thereof, for a period of not more than one hundred eighty (180) days by notice in writing to the Contractor and the Engineer which shall fix the date on which Work shall be resumed. The Contractor will resume the Work on the date so fixed.

#### **ARTICLE 43. Owner's Right to Terminate**

43.1 If the Contractor is adjudged bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for the Contractor or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws, or if he repeatedly fails to supply sufficiently skilled workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to Subcontractors, or for labor, materials or equipment, or if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction, or if he disregards the authority of the Engineer, or if he otherwise violates any provision of the Contract Documents, then the Owner may, without prejudice to any other right or remedy and after giving the Contractor and his Surety seven (7) Calendar Days written notice, terminate the services of the Contractor and take possession of the Project and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, and finish the Work by whatever method he may deem expedient. In such case, 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 direct and indirect costs of completing the Project, including compensation for additional professional services, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor will pay the difference to the Owner. Such costs incurred by the Owner will be determined by the Engineer and incorporated into a Change Order.

43.2 Where the Contractor's services have been so terminated by the Owner, said termination shall not affect any rights of the Owner against the Contractor or his Surety then existing or which may thereafter accrue. Any retention or payment of monies by the Owner due the Contractor will not release the Contractor or his Surety from liability.

43.3 Upon seven (7) Calendar Days written notice to the Contractor and the Engineer, the Owner may, without cause and without prejudice to any other right or remedy, elect to abandon the Project and terminate the Agreement. In such case, the Contractor and Engineer shall be paid for all Work executed and any expense sustained plus a reasonable profit.

#### **ARTICLE 44. Contractor's Right to Terminate**

If, through no act or fault of the Contractor, the Work is suspended for a period of more than one hundred eighty (180) Calendar Days by the Owner or under an order of court or other public authority, or the Engineer fails to act on any application for payment within thirty (30) Calendar Days after it is submitted, or the Owner fails to pay the Contractor any sum approved by the Engineer within sixty (60) Calendar Days of its approval and presentation, then the Contractor may, upon seven (7) Calendar Days written notice to the Owner and the Engineer, terminate the Agreement and recover from the Owner payment for all Work executed.

#### **ARTICLE 45. Miscellaneous**

45.1 Whenever any provision of the Contract Documents requires the giving of written notice it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to him who gives the notice.

45.2 The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder, and in particular but without limitation, the warranties, guarantees, and obligations imposed upon the Contractor and the rights and remedies available to the Owner and Engineer thereon, shall be in addition to and not a limitation of any otherwise imposed or available by law, by special guarantee or other provisions of the Contract Documents.

45.3 The Contract Documents shall be governed by the law of the place where the Project is located.

45.4 Except as otherwise provided, or approved in writing, Contractor shall not assign this Agreement or sublet it as a whole without the written consent of the Owner; nor shall the Contractor assign any monies due or to become due to it hereunder, without the previous written consent of the Owner. Owner may, however, assign this Agreement to any other party or entity, provided Owner continues to be responsible for the performance by such assignee of all undertakings of the Owner hereunder. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding on the parties hereto and their respective successors and assigns.

45.5 Contractor shall treat all information relating to the Project and all information supplied to the Contractor by the Owner and/or Engineer as confidential and propriety information of the Owner and/or Engineer and shall not permit its release to any other parties or make any public announcement or any publicity releases without the Owner's written authorization. Contractor shall also require Subcontractors and vendors to comply with this Agreement.

45.6 In performing its obligations hereunder, Contractor shall be deemed an independent Contractor and not an agent or employee of Owner and/or Engineer. Contractor shall have the exclusive authority to manage, direct and control the Work subject to the terms and conditions of this Agreement and approval of Owner and/or Engineer as provided herein. Owner is interested in only the results obtained and not in the methods used in achieving the results.

## **CITY SPECIAL PROVISIONS**

### **1. General**

These Special Provisions contain items of specific instruction and subject matter concerning construction detail and/or are modifications to the General Conditions and Standard Specifications. The Contractor shall conduct his work in conformance with the specifications set forth herein and in accordance with the Minnesota Department of Transportation Standard Specifications for Construction, 2016 Edition, which is incorporated by reference to these specifications, and also in accordance with the Standard Utility Specifications prepared by the City Engineers Association of Minnesota (CEAM).

### **2. Project Schedule**

The City of Ramsey anticipates, but does not guarantee award of this project on July 25, 2017. Construction is anticipated to commence on or about August 7, 2017.

### **3. Time for Completion and Liquidated Damages**

The Contractor shall complete the work on or before August 25, 2017. Failure to complete the project within this specified time shall result in the payment as liquidated damages according to the schedule contained in Table 1807-1 of the Minnesota Department of Transportation Standard Specifications for Construction, 2016 Edition.

### **4. Working Hours**

The work shall be carried out during normal daylight working hours in accordance with local ordinance and so as not to cause any unreasonable nuisance to affected residents. Under emergency conditions, this limitation may be waived in writing by the Engineer in conjunction with qualified local authority. Normal working hours in the City of Ramsey are considered to be from 7:00 a.m. to 10:00 p.m. on Monday through Saturday. The contractor shall provide 72 hour advance notice before working on Saturday. City Council approval is required for Sunday work.

### **5. Maintenance of Traffic**

All traffic control devices shall conform and be installed in accordance to:

- The “Minnesota Manual on Uniform Traffic Control Devices” (MN MUTCD);
- Part 6, “Field Manual for Temporary Traffic Control Zone Layouts” (Field Manual);
- The Speed Limits in Work Zones Guideline;
- The Minnesota Flagging Handbook;
- The Minnesota Standard Signs Manual;

- The Traffic Engineering Manual;

The Contractor shall submit the proposed traffic control layout, designed by a traffic engineer, to the Engineer for approval at least seven (7) days prior to the start of construction. At least 24 hours prior to placement, all traffic control devices shall be available on the Project for inspection by the Engineer. The Contractor shall modify his/her proposed traffic control layout and/or devices as deemed necessary by the Engineer.

The Contractor shall have an operator on call at all times to insure traffic movement within the project area. Local access to pedestrian facilities shall be maintained at all times. The Contractor shall be responsible for the immediate repair or replacement of all traffic control devices that become damaged, moved or destroyed, of all lights that cease to function properly, and of all barricade weights that are damaged, destroyed, or otherwise fail to stabilize the barricades. Material storage for the project shall be along the edge of the existing roadway. Barricades with flashers shall be placed at each end of materials and equipment stored on the edge of the road. Cones shall be placed at each end directing traffic towards the middle of the road and at intervals along the length of the materials as specified in the MNDOT manual. If there is a break large enough for parallel parking a vehicle between stored materials, then a flasher shall be placed at each end of the space.

The Contractor shall notify the local Police and Fire Departments prior to commencing construction that will restrict traffic on any City street to the degree that emergency traffic could not be immediately facilitated. The Contractor shall provide necessary signs, flashers and barricades for any parking or driving lane closures. All signing shall conform to the MnDOT Manual of Uniform Traffic Control Devices. All plans for lane closures shall be submitted to the Engineer for approval a minimum of 48 hours prior to any closures.

The cost of all work related to continuation and control of traffic, including maintenance of traffic, provision of continued access, and the placement, maintenance or removal of traffic control devices should be included in the bid item unit price for Traffic Control. In the event the Contractor fails to maintain the street or provide signing, the Owner may perform the work and deduct the cost from any amount due the Contractor.

## **6. Cleanup and Restoration**

When the work has been completed, the Contractor shall remove from the site all extra materials, equipment, debris and other supplies. All surfaces disturbed during the construction period shall be returned to their original condition or better.

## **7. Work Area**

The right of way width is 80 feet. The Contractor's operations shall be confined to these public right-of-ways. The Contractor shall secure the permission of the Engineer prior to entering onto any other lands, including easement areas.

## **8. Permits**

The Contractor will be required to obtain a City contractor's license.

## **9. Barricades, Guards and Safety Equipment**

To protect persons from injury and to avoid property damage, adequate barricades, construction signs, warning lights, and guards as required shall be placed and maintained by the contractor during the progress of the construction work. All material piles, excavation equipment, and materials which may serve as obstructions to traffic or hazards shall be enclosed by fences or barricades and shall be protected by adequate lighting when visibility is poor. The rules and regulations of local authorities respecting safety provisions shall be observed.

## **10. Preconstruction Conference Required**

Prior to initiating the work a preconstruction conference shall be scheduled and held with the contractor and his subcontractors, the City, utility companies (including fiber optic lines) or others with an interest in the project. The Contractor shall submit documentation for review at the preconstruction conference which: identifies construction personnel responsible for the work and project safety; provides a list of emergency or after hour contacts with their afterhours phone numbers; and identifies subcontractors and material suppliers. The Contractor shall prepare and submit a written schedule of the work, identifying work components and showing work start and completion dates required to comply with the schedule in the contract documents. The Contractor shall prepare and submit a list of material submittals that are required to comply with specified standards and will submit certificates of compliance or a schedule for compliance submittal.

No work is authorized on the project until the Notice to Proceed is issued. Once work has commenced, the Contractor shall continuously pursue completion in accordance with the approved schedule.

## **11. Construction Staking**

Construction staking shall be provided by the City Engineering department. The Contractor shall provide a 48 hour notice for initial grade stakes and 24 hour notice for replacement stakes. All replacement staking shall be paid for by the Contractor.

## **12. Protection of Utilities**

The Contractor is advised that utilities which include electric, gas, telephone, cable TV, fiber optic lines, sanitary sewer, storm sewer, and watermain are located within or near the project area anticipated for excavation. It is the Contractor's responsibility to obtain all locations from the respective utility companies. It is understood that no additional compensation shall be due the

Contractor because of the presence and protection of those utilities and appurtenances. The Contractor shall comply with the provisions of Minnesota Statutes Chapter 216 related to underground construction and utility protection (Gopher State One call).

### **13. Maintenance during Construction**

Once the Contractor commences work on the project, the construction area shall be maintained for the remainder of the project by the Contractor at their expense. Necessary signs and barricades shall be furnished by the Contractor. All existing surfaces not scheduled for removal shall be protected. All equipment which operates on bituminous or concrete surfaces shall be equipped with rubber tires. The Contractor shall provide reasonable access to all properties adjacent to the work. The cost of providing and maintaining continuous access where applicable, shall be included in the lump sum bid item price for Traffic Control. Any disturbed paved areas at intersections with public or private roads/driveway accesses must be brought to grade with class 5 at the end of each work day, unless road is closed for construction.

All unpaved surfaces shall be bladed and made passable at the end of each business day, unless road is closed for construction. Grading the surface will also be as directed by the Engineer when the travel lane is deemed impassable.

### **14. Surface Water and Sedimentation Control**

The Contractor shall take reasonable efforts to prevent soils from being deposited onto street surfaces. Temporary earth stockpiles shall have suitable erosion control measures in place to prevent this material from migrating onto the street and into the storm sewer system. The Contractor shall have a sweeper on site during construction or must have the availability of one on site within three hours. Streets shall be left clean at the end of each working day.

Contractor will be expected to provide a water truck for dust control. Water is available at the automated water fill station located at the Public Works Facility on Jasper Street and 142nd Avenue NW. Water will not be allowed to be drawn from City hydrants.

### **15. Tree Protection**

The contractor shall employ the following tree protection measures to encourage the survival of trees affected by construction. Roots larger than one half inch in diameter which have been fractured as a result of grading operations shall be sawed flush with a bow saw or loppers as soon as possible after being disturbed. No unnecessary vehicles shall be allowed in the tree root zone to avoid compaction of soil.

## **16. Basis of Payment**

Payment shall be made for the work on the basis specified below. The cost of any additional labor materials, tool and supplies which have not been specifically identified in this section for payment, but required to complete the project as per the plans and specifications shall be considered incidental to the project.

1. *Mobilization* – Payment shall be made on a lump sum basis for the mobilization of equipment.
2. *Traffic Control* – Payment shall be made on a lump sum basis as compensation for all equipment, material and labor costs required for the installation and maintenance of traffic control measures (signage, barricades, flasher, etc.), as directed by the Engineer, for any local traffic disruptions or temporary closures.
3. *Remove Pavement Marking* – Payment shall be made on a per square foot basis as compensation for all equipment, material, and labor costs required for the removal of pavement marking messages, i.e. turn arrows.
4. *Remove Pavement Marking* – Payment shall be made on a per lineal foot basis as compensation for all equipment, material, and labor costs required for the removal of pavement marking striping, i.e. 4” solid lines.
5. *Pavement Marking* – Payment shall be made on a per each basis as compensation for all equipment, material, and labor costs required for the transportation, and placement of the required pavement markings shown on the plans.
6. *Pavement Striping* – Payment shall be made on a per lineal foot basis as compensation for all equipment, material, and labor costs required for the transportation, and placement of the required pavement striping shown on the plans, based upon type, and size.

**CONSTRUCTION CONTRACT**

**THIS AGREEMENT** (the “Agreement”) is made and entered into this \_\_ day of \_\_\_\_\_, 2017, by and between \_\_\_\_\_, a Minnesota Corporation (the “Contractor”) and the City of Ramsey, a Minnesota Municipal Corporation, 7550 Sunwood Drive NW, Ramsey, Minnesota 55303 (the “Owner”).

**WITNESSETH**

**WHEREAS**, the City of Ramsey proposes to improve striping along 0.59 miles of Sunwood Drive east of Zeolite Street and west of Rhinestone Street, with City Improvement Project No. 17-04 (the “Project”); and

**WHEREAS**, the plans and specifications necessary for construction of the Project are defined in the Contract Documents and Technical Specifications dated June 27, 2017 (the “Contract Documents”); and

**WHEREAS**, the work required to complete the Project is defined in the Contract Documents (the “Work”); and

**WHEREAS**, the Contractor has made a written proposal and bid to the Owner to furnish the material, equipment, labor and everything necessary for the completion of the Work for the price and within the time schedule required by the Contract Documents; and

**WHEREAS**, the Contractor, as the lowest responsible bidder, has been awarded the contract for the Work by the City; and

**WHEREAS**, Contractor, in consideration of the payments hereinafter provided, for itself and its successors, as the case may be, hereby covenants and agrees to and with the Owner to perform the Work and furnish the material, under the supervision of the City Engineer; and

**WHEREAS**, Contractor acknowledges:

1. That it understands the Contract Documents;
2. That it has the equipment, technical ability, personnel and facilities to construct the Project in accordance with the Contract Documents and that it is licensed by all applicable agencies and governmental entities;
3. That the Contract Documents are, in its opinion, appropriate and adequate for the complete construction of the Project in a sound and suitable manner.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, it is agreed and understood as follows:

1. Work Performance. Contractor shall perform the Work as described in the Contract Documents which are incorporated herein by reference. Contractor agrees to comply

with all federal, state, and local laws and ordinances applicable to the services to be performed under this Agreement, including all safety standards. The Contractor shall be solely and completely responsible for conditions of the job site, including the safety of all persons and property during the performance of the services.

2. Commencement of Work. The Contractor shall commence work on the Project within ten (10) days of the date of the Notice to Proceed given by the City Engineer and shall have the Work substantially complete within the period specified in the Contract Documents. Failure to complete the work within this period will be cause for the Contractor to forfeit the amount as required by the Special Provisions terms of the Contract Documents and that it is appropriately licensed by all applicable agencies and governmental entities.
3. Contractor Compensation. The Owner shall compensate Contractor for the Work in the amount of \$\_\_\_\_\_ based upon the Contractor's accepted bid subject to any additions or deductions provided therein, payment shall be made pursuant to the payment provisions outlined in the Contract Documents.
4. Independent Contractor Relationship. It is expressly understood that the Contractor is an "independent contractor" and not an employee of the City. The Contractor shall have control over the manner in which the services are performed under this Agreement. The Contractor shall supply, at its own expense, all materials, supplies, equipment and tools required to accomplish the work contemplated by this Agreement. The Contractor shall not be entitled to any benefits from the City, including, without limitation, insurance benefits, sick and vacation leave, workers' compensation benefits, unemployment compensation, disability, severance pay, or retirement benefits.
5. Insurance Requirements.
  - A. Liability. The Contractor agrees to maintain commercial general liability insurance in a minimum amount of \$1,500,000 per occurrence; \$2,000,000 annual aggregate. The policy shall cover liability arising from premises, operations, products-completed operations, personal injury, advertising injury, and contractually assumed liability. The City shall be named as an additional insured.
  - B. Automobile Liability. If the Contractor operates a motor vehicle in performing the services under this Agreement, the Contractor shall maintain commercial automobile liability insurance, including owned, hired, and non-owned automobiles, with a minimum liability limit of \$1,000,000, combined single limit.
  - C. Workers' Compensation. The Contractor agrees to comply with all applicable workers' compensation laws in Minnesota.
  - D. Certificate of Insurance. The Contractor shall, prior to commencing services, deliver to the City a Certificate of Insurance as evidence that the above coverage's are in full force and effect.
6. Indemnification. To the fullest extent permitted by law, the Contractor agrees to defend, indemnify and hold harmless the City, and its employees, officials, volunteers and agents from and against all claims, actions, damages, losses and expenses, including attorney fees, arising out of the Contractor's negligence or the Contractor's performance or failure to perform its obligations under this Agreement. The Contractor's indemnification obligation shall apply to the Contractor's subcontractor(s), or anyone directly or indirectly employed or hired by the Contractor, or anyone for whose acts the Contractor



- G. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Minnesota. All proceedings related to this Agreement shall be venued in the State of Minnesota.
- H. Waivers. The waiver by either party of any breach or failure to comply with any provision of this Agreement by the other party shall not be construed as, or constitute a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this Agreement.
- I. Ownership of Documents. All reports, plans, specifications, data, maps, and other documents produced by the Contractor in the performance of services under this Agreement shall be the property of the City.
- J. Government Data. The Contractor agrees to maintain all data received from the City in the same manner as the City as required under the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13.
- K. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original, and which taken together shall be deemed to be one and the same document.
- L. Savings Clause. If any court finds any portion of this Agreement to be contrary to law, invalid, or unenforceable, the remainder of the Agreement will remain in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have caused this instrument to be executed in triplicate counterparts the day and year first above written.

**CONTRACTOR:**

**OWNER:**

**CITY OF RAMSEY**

\_\_\_\_\_

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

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

Sarah Strommen, Its Mayor

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

**ATTEST:**

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

Kurt Ulrich, Its City Administrator

**CERTIFICATE OF OWNER’S ATTORNEY**

I, the undersigned, Joseph J. Langel, the duly authorized and acting legal representative of the City of Ramsey, do hereby certify that I have reviewed the attached contract dated \_\_\_\_\_, 2017, between the City of Ramsey as Owner, and \_\_\_\_\_ as Contractor. In addition, I have examined the attached Performance Bond of said Contractor as Principal, and \_\_\_\_\_ as Surety, dated \_\_\_\_\_, 2017, and which is the Surety’s Bond \_\_\_\_\_. In addition, I have examined the attached Payment Bond of said Contractor as Principal, and \_\_\_\_\_ as Surety, dated \_\_\_\_\_, 2017, and which is the Surety’s Bond \_\_\_\_\_. Based upon said review, I approve these documents to be Legal Form.

Dated: \_\_\_\_\_, 2017

\_\_\_\_\_  
Ramsey City Attorney

## **NOTICE TO BIDDERS**

Minnesota Statutes that require prompt payment to subcontractors:

16A.1245 Prompt payment to subcontractors.

Each state agency contract must require the prime contractor to pay any subcontractor within ten days of the prime contractor's receipt of payment from the state for undisputed services provided by the subcontractor. The contract must require the prime contractor to pay interest of 1-1/2 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 or more is \$10. For an unpaid balance of less than \$100, the prime contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a prime contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

HIST: 1990 c 541 s 1

337.10 Building and construction contracts; prohibited provisions.

Subd. 3. Prompt payment to subcontractors. A building and construction contract shall be deemed to require the prime contractor and all subcontractors to promptly pay any subcontractor or material supplier contract within ten days of receipt by the party responsible for payment of payment for undisputed services provided by the party requesting payment. The contract shall be deemed to require the party responsible for payment to pay interest of 1-1/2 percent per month to the party requesting payment on any undisputed amount not paid on time. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the party responsible for payment shall pay the actual penalty due to the party requesting payment. A party requesting payment who prevails in a civil action to collect interest penalties from a party responsible for payment must be awarded its costs and disbursements, including attorney fees incurred in bringing the action. This subdivision does not apply to construction of or improvements to residential real estate as defined in section 326.83, subdivision 17, or to construction of or improvements to attached single-family dwellings, if those dwellings are used for residential purposes and have fewer than 13 units per structure.

HIST: 1997 c 127 s 1; 1998 c 289 s 1,2; 1999 c 116 s 2