

**City of Hermantown, Minnesota
Public Works Department**

**Standard Specifications
for Construction
2022 Edition**

APPENDIX C

General Conditions

SECTION GC

Revised 03/2022

1. CONTRACT AND CONTRACT DOCUMENTS

The plans, specifications and addenda shall form part of this Contract and the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth. The table of contents, titles, headings, running headlines and marginal notes contained herein and in said documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect limit or cast light on the interpretation of the provisions to which they refer.

2. DEFINITIONS

The following terms as used in this Contract are respectively defined as follows:

- a) "Owner": The village, city, company, corporation or individual as designated in the ADVERTISEMENT FOR BIDS and in the PROPOSAL is herein referred to as the "OWNER".
- b) "ENGINEER": Northland Consulting Engineers L.L.P., 102 S 21st Avenue West, Suite One, Duluth, MN, 55806, has been appointed by the owner to make these plans and specifications and is herein referred to as the "ENGINEER".
- c) "SUPERVISOR": The supervisor or resident project engineer is an authorized representative of the engineer assigned to make inspection of the work performed and materials furnished by the contractor, to establish grades with help as needed to be furnished by the contractor and generally assist in supervising the execution of the work in accordance with the plans and specifications. The supervisor has no authority to order or permit deviations from the plans and specifications, or to accept on behalf of the owner, any materials or workmanship which does not conform fully to the requirements of the contract.
- d) "CONTRACTOR": A person, firm or corporation with whom the contract is made by the owner.
- e) "SUBCONTRACTOR": A person, firm or corporation supplying labor and materials or only labor for work at the site of the project for and under separate contract or agreement with the contractor.
- f) "WORK ON (AT) THE PROJECT": Work to be performed at the location of the project, including the transportation of materials and supplies to or from the location of the project by employees of the contractor and any subcontractor.

3. DRAWINGS

- a) The drawings, with such corrections, interlineation and details as may be found upon them shall be considered as a part of and illustrative of this specification and cooperative with it. Any work or material herein specified and not shown on the drawings, or any work shown on the drawings and not mentioned in the specifications must be considered as included as though both shown and specified. Where parts of the work are given, the balance shall be a repetition and where any detail is started upon a drawing, it shall be in the construction carried the full length of the part it details. Parts not specially detailed shall be constructed in the customary manner of the class or work so as to maintain the strength and complete the parts they compose.
- b) Where figures or notes are given, same shall be preferred to scale dimensions, but where none are given, scale drawings shall be accurately followed. Large scale drawings shall take precedence over those small scale. All dimensions and details shall be checked against those on job. Job dimensions to hold in preference to plan scale and dimensions.
- c) The contractor shall not take advantage of any clerical error or manifest omissions or discrepancies in the drawings or specifications but shall immediately refer same to the engineer for solution and correction, whose decision shall be final; and in no case shall the contractor proceed in doubt.

- d) The owner reserves the right to make any changes or alterations in the drawings and specifications in accordance with Paragraph 18 hereof which he may deem advisable, but the contractor shall make no changes in the drawings or specifications except upon written orders of the engineer.
- e) All drawings and specifications are the property of the engineer and must be returned to him upon completion of the work and shall not be used for the construction of any other work without the knowledge and consent of the engineer.

4. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS

The contractor will be furnished additional instructions and detail drawings as necessary to carry out the work included in the contract. The additional drawings and instructions thus supplied to the contractor will coordinate with the contract documents and will be so prepared that they can be reasonably interpreted as part thereof. The contractor shall carry out the work in accordance with the additional detail drawings and instructions. The contractor and the engineer will prepare jointly (a) a schedule, fixing the dates at which special detail drawings will be required; such drawings, if any, to be furnished by the engineer in accordance with said schedule, and (b) a schedule fixing the respective dates for the submission of shop drawings, the beginning of manufacture, testing and installation of materials, supplies and equipment, and the completion of the various parts of the work; each such schedule to be subject to change from time to time in accordance with the progress of the work.

5. SHOP OR SETTING DRAWINGS

The contractor shall submit promptly to the engineer two copies of each shop or setting drawing prepared in accordance with the schedule predetermined as aforesaid. After examination of such drawings by the engineer and the return thereof, the contractor shall make such corrections to the drawings as have been indicated and shall furnish the engineer with two corrected copies. If requested by the engineer, the contractor must furnish additional copies. Regardless of corrections made in or approval given to such drawings by the engineer the contractor will nevertheless be responsible for the accuracy of such drawings and for their conformity to the plans and specifications, unless he notified the engineer in writing of any deviations at the time he furnishes such drawings.

6. SETS OF PLANS AND SPECIFICATIONS

The engineer will furnish the contractor with two (2) sets of plans and specifications, on paper, as needed for his use during the prosecution of the work. Any additional sets of plans and specifications required shall be paid for by the contractor at cost.

7. MATERIALS, SERVICES AND FACILITIES

- a) It is understood that except as otherwise specifically stated in the contract documents, the contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to execute, complete and deliver the work within the specified time.
- b) Any work necessary to be performed after regular working hours, on Sundays or legal holidays shall be performed without additional expense to the owner. When the contractor elects to work at such times, notice of his intention to do so shall be given to the engineer within a reasonable time in advance.

8. CONTRACTOR'S TITLE TO MATERIALS

No materials or supplies for the work shall be purchased by the contractor or by any subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The contractor warrants that he has good title to all materials and supplies used by him in the work, free from all liens, claims or encumbrances.

9. INSPECTION AND TESTING OF MATERIALS

- a) All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the owner. The owner will pay for all laboratory inspection service direct, and not as a part of the contract.
- b) Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for uses intended.
- c) Contractor shall provide adequate notice and coordination of planned work activities so that construction inspection can be provided by the ENGINEER.

10. SUBSTITUTE AND 'OR EQUAL' ITEMS

The Contract, if awarded, will be on the basis of materials and equipment described in the drawings or specified in the specifications without consideration of possible substitute or "or-equal" items. Whenever it is indicated in the drawings or specified in the specifications that a substitute or "or-equal" item of material or equipment may be furnished or used by CONTRACTOR if accepted in writing by ENGINEER. Application for such acceptance will not be considered by ENGINEER until after the effective date of the AGREEMENT. The procedure for submission of any such application by CONTRACTOR and consideration by ENGINEER is set forth in the GENERAL CONDITIONS and may be supplemented in the GENERAL AND SPECIFIC REQUIREMENTS.

11. PERMITS AND REGULATIONS

The contractor shall procure and pay for all permits, licenses and approvals necessary for the execution of his contract.

Vendors shall secure all patent rights free of charge to the owner and free of infringement suits.

The contractor shall comply with all laws, ordinances, rules, orders, and regulations relating to the performance of the work, the protection of adjacent property, and the maintenance of passageways, guard fences or other protective facilities.

12. EXAMINATION OF CONTRACT DOCUMENTS AND SITE

It is the responsibility of each Bidder before submitting a Bid:

- a) To examine thoroughly the CONTRACT DOCUMENTS and all information contained in the Bidding Documents.
- b) To visit the site to become familiar with and satisfy the Bidder as to the general, local and site conditions, including subsurface conditions, if applicable, that may affect cost, progress, performance or furnishing of the WORK.
- c) To consider federal, state, and local laws and regulations that may affect cost, progress, performance or furnishing of the WORK.
- d) To study and carefully correlate the Bidder's knowledge and observations with the CONTRACT DOCUMENTS and other related data.
- e) To promptly notify the ENGINEER of all conflicts, errors, ambiguities or discrepancies which the Bidder has discovered in or between the CONTRACT DOCUMENTS and other related documents.

Information and data shown or indicated in the Bidding Documents with respect to existing underground facilities at or contiguous to the site is based upon information and data furnished to OWNER and ENGINEER by owners of such underground facilities or others, and the OWNER and ENGINEER do not assume responsibility for the accuracy or completeness thereof.

The OWNER will provide each Bidder access to the site to conduct such examinations, investigations, explorations, tests and studies as each Bidder deems necessary for submission of a Bid. Bidders must fill all holes and clean up and restore the site to its former condition upon completion of such explorations, investigations, tests and studies. Bidders shall provide a copy of the result of invasive explorations, tests and studies to Owner and the Engineer.

The submission of a Bid will constitute an inconvertible representation by the Bidder, that without exception the Bid is premised upon performing and furnishing the Work required by the CONTRACT DOCUMENTS and applying the specific means, methods, techniques, sequences or procedures of construction (if any) that may be shown or indicated or expressly required by the CONTRACT DOCUMENTS, that the Bidder has given ENGINEER written notice of all conflicts, errors, ambiguities and discrepancies that the Bidder has discovered in the CONTRACT DOCUMENTS and the written resolution thereof by ENGINEER is acceptable to Bidder, and that the CONTRACT DOCUMENTS are sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the WORK.

13. CONTRACTOR'S OBLIGATIONS

The contractor shall and will, in good workmanlike manner, do and perform all work and furnish all supplies and materials, machinery, equipment, facilities and means except as herein otherwise expressly specified, necessary or proper to perform and complete all the work required by this contract, within the time herein specified, in accordance with the provisions of this contract and said specifications and in accordance with the plans and drawings covered by this contract and any and all supplemental plans and drawings, and in accordance with the directions of the engineer as given from time to time during the progress of the work. He shall furnish, erect, maintain and remove such construction plant and such temporary works as may be required. The contractor shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the contract and specifications, and shall do, carry on, and complete the entire work to the satisfaction of the engineer and the owner.

14. WEATHER CONDITIONS

In the event of temporary suspension or work, or during inclement weather, or whenever the engineer shall direct, the contractor will, and will cause his subcontractors to protect carefully his and their work and materials against damage or injury from the weather. If, in the opinion of the engineer, any work or materials shall have been damaged or injured by reason of failure on the part of the contractor or any of his subcontractors to so protect his work, such materials shall be removed and replaced at the expense of the contractor.

15. PROTECTION OF WORK AND PROPERTY - EMERGENCY

The contractor shall at all times safely guard the owner's property from injury or loss in connection with this contract. He shall, at all times, safely guard and protect his own work and that of adjacent property, from damage. The contractor shall replace or make good any such damage, loss or injury unless such be caused directly by errors contained in the contract or by the owner, or his duly authorized representative.

In case of an emergency which threatens loss or injury of property, and/or safety of life, the contractor will be allowed to act, without previous instructions from the engineer, in a diligent manner. He shall notify the engineer immediately thereafter.

Any claim for compensation by the contractor due to such extra work shall be promptly submitted to the engineer for approval.

Where the contractor has not taken action but has notified the engineer of an emergency threatening injury to persons or damage to the work or any adjoining property, he shall act as instructed or authorized by the engineer.

The amount of reimbursement claimed by the contractor on account of any emergency action shall be determined in the manner provided in Paragraph 18 of the General Conditions.

16. REPORTS, RECORDS AND DATA

The contractor shall submit to the owner such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data as the owner may request concerning work performed or to be performed under this contract.

17. SUPERINTENDENCE BY CONTRACTOR

At the site of the work the contractor shall employ a construction superintendent or foreman who shall have full authority to act for the contractor. It is understood that such representative shall be acceptable to the engineer.

18. CHANGES IN WORK

No changes in the work covered by the approved contract documents shall be made without having prior written approval of the owner. Charges or credits for the work covered by the approved change shall be determined by one or more, or a combination of the following methods:

- a) Unit bid prices previously approved
- b) An agreed lump sum
- c) The actual cost of:
 - 1) Labor, including foremen
 - 2) Materials entering permanently into the work
 - 3) The ownership or rental cost of construction plant and equipment during the time of use on the extra work
 - 4) Power and consumable supplies for the operation of power equipment
 - 5) Insurance
 - 6) Social Security and old age and unemployment contributions

To the cost under (c) there shall be added a fixed fee to be agreed upon but not to exceed fifteen percent (15%) of the estimated cost of the work. The fee shall be compensation to cover the cost of supervision, overhead, bond, profit and any other general expenses.

19. EXTRAS

Without invalidating the contract, the owner may order extra work of the kind bid upon or make changes by altering, adding to or deducting from the work, the contract sum being adjusted accordingly, and the consent of the surety being first obtained where necessary or desirable. All the work of the kind bid upon shall be paid for at the price stipulated in the proposal, and no claims for any extra work or materials shall be allowed unless the work is ordered in writing by the owner or its engineer acting officially for the owner, and the price is stated in the order.

20. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

It is hereby understood and mutually agreed, by and between the contractor and the owner, that the date of beginning and the time for completion as specified in the contract of the work to be done hereunder are ESSENTIAL CONDITIONS of this contract; and it is further mutually understood and agreed that the work embraced in this contract shall be commenced on a date to be specified in the Notice to Proceed.

The contractor agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the contractor and the owner, that the time for the completion of the work described herein is a

reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevail in this locality.

If the said contractor shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the owner, then the contractor does hereby agree, as a part consideration for the awarding of this contract, to pay to the owner the amount specified in the contract, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the contractor shall be in default after the time stipulated in the contract for completing the work.

The said amount is fixed and agreed upon by and between the contractor and the owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the owner would in such event sustain, and said amount is agreed to be the amount of damages which the owner would sustain and said amount shall be retained from time to time by the owner from current periodical estimates.

It is further agreed that time is of the essence of each and every portion of this contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract. Provided, that the contractor shall not be charged with liquidated damages or any excess cost when the owner determines that the contractor is without fault and the contractor's reasons for the time extension are acceptable to the owner; Provided further, that the contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due:

- a) To any preference, priority or allocation order duly issued by the owner;
- b) To unforeseeable cause beyond the control and without the fault or negligence of the contractor, including but not restricted to, acts of God, or of the public enemy, acts of the owner, acts of another contractor in the performance of a contract with the owner, fires floods, epidemics, quarantine restrictions, strikes, freight embargoes and sever weather; and
- c) To any delays of sub-contractors or suppliers occasioned by any of the causes specified in sub-sections (a) and (b) of this article; Provided further, that the contractor shall, within ten (10) days from the beginning of such delay, unless the owner shall grant a further period of time prior to the date of final settlement of the contract, notify the owner, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay and notify the contractor within a reasonable time of its decision in the matter.

21. CORRECTION OF WORK

All work, all materials, whether incorporated in the work or not, all processes of manufacture and all methods of construction shall be at all times and places subject to the inspection of the engineer who shall be the final judge of the quality and suitability of the work, materials, processes of manufacture and methods of construction for the purposes for which they are used. Should they fail to meet his approval they shall be forthwith reconstructed, made good, replaced and/or corrected, as the case may be, by the contractor at his own expense. Rejected material shall immediately be removed from the site. If, in the opinion of the engineer, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the work injured or not performed in accordance with the contract documents, the compensation to be paid to the contractor hereunder shall be reduced by such amount as in the judgment of the engineer shall be equitable.

22. CLAIMS FOR EXTRA COSTS

No claim for extra work or cost shall be allowed unless the same was done in pursuance of a written order of the engineer approved by the owner, as aforesaid, and the claim presented with the first estimate after the changed or extra work is done. When work is performed under the terms of subparagraph 18 (c) of the General Conditions, the contractor shall furnish satisfactory bills, payrolls, and vouchers covering all items of cost and when requested by the owner, give the owner access to accounts relating thereto.

23. RIGHT OF THE OWNER TO TERMINATE CONTRACT

In the event that any of the provisions of this contract are violated by the contractor, or by any of his subcontractors, the owner may serve written notice upon the contractor and the surety of its intention to terminate the contract, and unless within ten (10) days after the serving of such notice upon the contractor, such violation or delay shall cease and satisfactory arrangement or correction be made, the contract shall, upon the expiration of said ten (10) days, cease and terminate. In the event of any such termination, the owner shall immediately serve notice thereof upon the surety and the contractor, and the surety shall have the right to take over and perform the contract; Provided, however, that if the surety does not commence performance thereof within ten (10) days from the date of the mailing to such surety of notice of termination, the owner may take over the work and prosecute the same to completion by contract or by the force account for the account and at the expense of the contractor, and the contractor and his surety shall be liable to the owner for any excess cost occasioned the owner thereby, and in such event the owner may take possession of and utilize in completing the work, such materials, appliances and plant as may be on the site of the work and necessary therefore.

24. CONSTRUCTION SCHEDULE AND PERIODIC ESTIMATES

Immediately after execution and delivery of the contract, and before the first partial payment is made, the contractor shall deliver to the owner an estimated construction progress schedule in form satisfactory to the owner, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the contract documents and the anticipated amount of each monthly payment that will become due the contractor in accordance with the progress schedule. The contractor shall also furnish (a) a detailed estimate giving a complete breakdown of the contract price and (b) periodic itemized estimates of work done for the purpose of making partial payments thereon. The costs employed in making up any of these schedules will be used only for determining the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from the contract price.

25. PAYMENT TO CONTRACTOR

- a) Not later than the 15th day of each calendar month the owner shall make a progress payment to the contractor on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month under this contract, but to insure the proper performance of this contract, the owner shall retain five percent (5%) of the amount of each estimate until final completion and acceptance of all work covered by this contract.
- b) In preparing estimates, the material delivered on the site and preparatory work done may be taken into consideration.
- c) All material and work covered by partial payments made shall thereupon become the sole property of the owner, but this provision shall not be construed as relieving the contractor from the sole responsibility for the care and protection of materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of the owner to require the fulfillment of all of the terms of the contract.
- d) Owner's right to withhold certain amounts and make application thereof: The contractor agrees that he will indemnify and save the owner harmless from all claims growing out of the lawful demands of sub-contractors, laborers, workmen, mechanics, material men, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this contract. The contractor shall, at the owner's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have to be paid, discharged or waived. If the contractor fails to do so, then the owner may, after having served written notice on the said contractor, either pay unpaid bills of which the owner has written notice, direct, or withhold from the contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the contractor shall be resumed, in accordance with the terms of this contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon the owner to either the contractor or his surety.
- e) Final Payment. The balance due the Contractor hereunder, including any retainage, shall be payable after the Owner, by resolution of its City Council, determines the Contractor shall have obtained or caused to occur the

following:

- (i) Completion of the Work; and
- (ii) Inspection and approval of the Work hereunder, by the engineer; and
- (iii) Final resolution of all claims for damages made with respect to work performed by Contractor under this Agreement; and
- (iv) Approval by the Owner of the Contractor's final application for payment.

In paying any unpaid bills of the contractor, the owner shall be deemed the agent of the contractor, and any payment so made by the owner, shall be considered as a payment made under the contract by the owner to the contractor, and the owner shall not be liable to the contractor for any such payment made in good faith.

26. ACCEPTANCE OF FINAL PAYMENT AS RELEASE

The acceptance by the contractor of final payment shall be and shall operate as a release to the owner of all claims and all liability to the contractor for all things done or furnished in connection with this work and for every act and neglect of the owner and others relating to or arising out of this work. No payment, however, final or otherwise, shall operate to release the contractor or his sureties from any obligations under this contract or the performance bond.

27. PAYMENTS BY CONTRACTOR

The contractor shall pay (a) for all transportation and utility services not later than the calendar month following that in which services are rendered, (b) for all materials, tools, and other expendable equipment to the extent of 90% of the cost thereof, not later than the calendar month following that in which such materials, tools and equipment are delivered at the site of the project, and the balance of the cost thereof not later than the 30th day following the completion of that part of the work in or on which such materials, tools and equipment are incorporated or used and (c) to each of his subcontractors, not later than the 7th day following each payment to the contractor, the respective amounts allowed the contractor on account of the work performed by his subcontractors to the extent of each subcontractor's interest therein.

28. CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE

The Contractor agrees to indemnify and save harmless the Owner, its officers, employees, agents and assigns against loss or expense, including attorneys' fees, by reason of the liability imposed by law upon the Owner for damages because of bodily injuries, including death at any time resulting therefrom, accidentally sustained by any person or persons, or on account of damage to property arising out of or in consequence of the performance or non-performance of this Construction Contract, whether such injuries to persons or damage to property are due or claimed to be due as a result of negligence or willful misconduct of the Contractor, its subcontractors, employees, agents or any other person.

The Contractor shall not commence work under this contract until the Contractor has obtained all the insurance required under this paragraph and such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work on any subcontract until the insurance required of the subcontractor has been obtained and approved.

- a) Compensation Insurance: The Contractor and each subcontractor shall procure and shall maintain during the term of the contract Worker's Compensation Insurance as required by applicable Minnesota law for all employees to be engaged in work at the site of the Project. In case any class of employees engaged in hazardous work on the Project is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide adequate employer's liability insurance for the protection of such employees as are not otherwise protected. Contractor shall maintain "stop gap" coverage if Contractor obtains Workers' Compensation coverage from any state fund if Employer's liability coverage is not available.
- b) Contractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance: The Contractor shall procure and shall maintain during the term of the Contract Contractor's Property Damage Insurance and Vehicle Liability Insurance and Contractor's Public Liability Insurance in the amounts specified in Paragraphs (g), (h) and (i) below.

- c) Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance: The Contractor shall either (1) require each subcontractor to procure and to maintain during the life of any subcontract, subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the amounts specified in Paragraphs (g), (h) and (i) below, or (2) insure the activities of the subcontractors in Contractor's policy, specified in Paragraph (b) above.
- d) Scope of Insurance and Special Hazards: The insurance required under Paragraphs (b) and (c) hereof shall provide adequate protection for the Contractor and the subcontractors, respectively against damage claims which may arise from operations under this contract, whether such operations be by the insured or by any one directly or indirectly employed by the insured and, also against any of the special hazards which may be encountered in the performance of this Contract as enumerated in Paragraph (g) below.
- e) Indemnification. The Contractor shall indemnify and save harmless the Owner from all claims and actions of any kind arising from, or incidental to the performance of the Contract and expenses incidental to such claims and actions, including attorneys' fees, and shall assume without expense to the Owner, the defense of any such claims or actions. Except to the extent prohibited by law, this indemnity applies regardless of any strict liability or negligence attributable to the Owner (including sole negligence) and regardless of the extent to which the underlying occurrence (i.e., the event giving rise to a claim which would have been covered by the specified insurance) is attributable to the negligent or otherwise wrongful act or omission (including breach of contract) of Owner, its agents, employees or delegates. Contractor agrees that this indemnity shall be construed and applied in favor of indemnification. Contractor also agrees that if applicable law limits or precludes any aspect of this indemnity, then the indemnity will be considered limited only to the extent necessary to comply with that applicable law. The stated indemnity continues until all applicable statutes of limitation have run.

If a claim arises within the scope of the stated indemnity, the Owner may require Contractor to:

- i. Furnish and pay for a surety bond, satisfactory to the Owner, guaranteeing performance of the indemnity obligation; or
- ii. Furnish a written acceptance of tender of defense and indemnity from Contractor's insurance company.

Contractor will take the action required by the Owner within fifteen (15) days of receiving notice from the Owner.

- f) Proof of Insurance: The Contractor shall furnish the Owner with a certificate showing the type, amount, class of operations covered, effective dates and dates of expiration of policies. Such certificates shall contain substantially the following statement: "The insurance covered by this certificate will not be canceled, materially altered, or not renewed, except after thirty (30) days written notice or ten (10) days for non-payment of premium, has been received by the Owner." Owner is to be named as an additional insured on such Certificate and not merely as a Certificate holder. Contractor must provide Owner with appropriate endorsements to its policy(ies) of insurance reflecting the status of Owner as an additional insured and requiring that the foregoing notice of cancellation, material alteration or non-renewal be provided to owner by the insurance company providing such insurance policy(ies) to Contractor. In addition, all policies shall contain a waiver of subrogation in favor of Owner. All policies shall apply on a "per project" basis. Contractor agrees to maintain all coverage required herein throughout the term of the Contract and for a minimum of two (2) years following Owner's written acceptance of the Contract.

- g) Limits of Insurance:

Employer's Liability	Each Accident	\$500,000.00
	Disease Policy Limit	\$500,000.00
	Disease Each Employee	\$500,000.00

Worker's Compensation: As required by Minnesota law with an
"all states" endorsement

Independent Contractor's protective
coverage liability:

Bodily Injury:	Per Occurrence	\$2,000,000.00
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Property Damage	Per Occurrence	\$2,000,000.00
Products and completed operations coverage to be kept in place for the duration of any contract guarantee period:		
Bodily Injury	Per Occurrence	\$2,000,000.00
Property Damage	Per Occurrence	\$2,000,000.00
Comprehensive General Liability, Premises and Operations:		
Bodily Injury	Per Occurrence	\$2,000,000.00
Comprehensive General Liability, Property Damage and Bodily Injury:		
	Per Occurrence	\$2,000,000.00
Products – Completed Operations	Per Occurrence	\$2,000,000.00
Fire Legal Liability	Each Occurrence	\$100,000.00
Medical Expense:		\$5,000.00
Contractual Liability covering customary Construction Contract and subcontract indemnity provisions:		
Bodily Injury	Per Occurrence	\$2,000,000.00
Contractual Liability covering customary Construction Contract and subcontract indemnity provisions:		
Property Damage	Per Occurrence	\$2,000,000.00
Comprehensive Automobile Liability		
		\$2,000,000.00
Combined single limit each accident (shall include coverage for all owned, hired and non-owned vehicles).		
Property Damage	Per Occurrence	\$2,000,000.00
"All Risk" Builder's Risk Insurance		Completed Value Form

- h) Property Insurance: Contractor shall provide "All Risk" builder's risk insurance under a completed value form on all work on the Project, including foundations, permanent fixtures and attachments, machinery and equipment included in or installed under the Contract, debris removal, architects' and engineer's fees, temporary structures, materials, equipment and supplies of all kinds located on the Project, to the full replacement value thereof, except that such policy may provide for a deductible amount not to exceed \$25,000.00 per occurrence. Said insurance shall be endorsed to provide consent for occupancy of the Project and shall be maintained in effect until permanent property coverage is in force. Such insurance shall be written in the names of Contractor, any subcontractor and Owner, as their interests may appear. Contractor, all subcontractors, and suppliers waive all rights against Owner for damages caused by fire or insured perils, except such rights as are set forth hereunder to the proceeds of such insurance payable in the event of such loss.
- i) Public Liability Insurance: Public Liability Insurance written on an "occurrence" basis under Comprehensive General Liability Form with "Broad Form" property damage liability coverage, with the XCU exclusion removed, in limits specified in paragraph (g) above. Contractor shall require such liability coverage from all subcontractors unless they are insured under the Contractor's policies. Certificates evidencing such coverage obtained by any subcontractor shall be provided to Owner and Engineer/Architect.

- j) General Liability: Prior to starting the Work, Contractor shall procure, maintain and pay for such insurance as will protect against claims or loss which may arise out of operations by Contractor or by any subcontractor or by anyone employed by any of them or by anyone for whose acts any of them may be liable. Such insurance shall include, but not be limited to, minimum coverages and limits of liability specified in this section or required by law.
- k) Commercial General Liability: The Commercial General Liability Policy shall be on ISO form CG 00 01 12 07 or CG 00 01 04 13, or the equivalent. Such insurance shall cover liability arising from premises, operations, independent contractors, products- completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the Commercial General Liability form arising from pollution, explosion, collapse, underground property damage or work performed by subcontractors.
- l) Claim Form: Contractor shall obtain and provide to Owner, with the Certificate of Insurance, a Claim Form for use by parties with claims against Contractor arising out of the performance of work by Contractor under the Contract with Owner.
- m) Primary Policies. All policies shall be primary and non-contributory.
- n) Deductible Responsibilities. It shall be Contractor's responsibility to pay any retention or deductible for the coverages required herein.
- o) Insurance Company Rating. Contractor shall maintain in effective all insurance coverages required under this section at Contractor's sole expense and with insurance companies licensed to do business in the state of Minnesota and having a current A.M. best rating of no less than A, unless specifically accepted by Owner in writing.

29. PERFORMANCE BOND

The contractor shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the contract prices as security for the faithful performance of this contract. Only a bond without limitations or restrictions will be accepted. The bond will be for the use and benefit of the owner, as well as all persons who may become entitled to liens under said contract, according to the provisions of the laws of the applicable State or territory in such case made and provided. Bond shall be in force until one year after the completion of the contract to allow the owner to be free to adjust and satisfy any claims or liability arising from the construction of this work, and this bond shall be liable for any expense caused by such adjustment. Before final acceptance the performance bond must be approved by the owner.

30. PAYMENT BOND

The contractor shall furnish a payment bond in an amount at least equal to one hundred percent (100%) of the contract price as security for the payment of all persons supplying labor and material in connection with the performance of this contract. Only a bond without limitation or restrictions will be accepted. The bond shall be for the use and benefit of the owner, as well as all persons who may become entitled to liens under this contract according to the provisions of the laws of the applicable State or territory in such case made and provided. The bond shall be in force for one year after the completion of the contract to allow the owner to be free to adjust and satisfy any claims or liability arising from the construction of this contract, and this payment bond shall be liable for any expense caused by such adjustment. Before final acceptance of this contract, the payment bond must be approved by the owner.

31. ADDITIONAL OR SUBSTITUTE BOND

If at any time the owner for justifiable cause shall be or become dissatisfied with the surety or sureties for the performance bond, the contractor shall within five (5) days after notice from the owner to do so substitute an acceptable bond in such form and sum and signed by such other surety or sureties as may be satisfactory to the owner. The premiums on such bond shall be paid by the contractor. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished such an acceptable bond to the owner.

32. ASSIGNMENTS

The contractor shall not assign the whole or any part of this contract or any monies due or to become due hereunder without written consent of the owner. In case the contractor assigns all or any part of any monies due or to become due under this contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the contractor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the work called for in this contract.

33. MUTUAL RESPONSIBILITY OF CONTRACTORS

If, through acts of neglect on the part of the contractor any other contractor or any subcontractor shall suffer loss of damage on work, the contractor agrees to settle with such other contractor or subcontractor by agreement or arbitration if such other contractor or subcontractors will so settle. If such other contractor or subcontractor shall assert any claim against the owner on account of any damage alleged to have been sustained, the owner shall notify the contractor, who shall indemnify and save harmless the owner against any such claim.

34. SEPARATE CONTRACTS

The contractor shall coordinate his operations with those of other contractors. Cooperation will be required in the arrangement for the storage of materials and in the detailed execution of the work. The contractor, including his subcontractors, shall keep informed of the progress and the detail work of other contractors and shall notify the engineer immediately of lack of progress or defective workmanship on the part of other contractors. Failure of a contractor to keep informed of the work progressing on the site and failure to give notice of lack of progress or defective workmanship by others shall be construed as acceptance by him of the status of the work as being satisfactory for proper coordination with his own work.

35. SUBCONTRACTING

- a) The contractor may utilize the services of specialty subcontractors on those parts of the work which, under normal contracting practices, are performed by specialty subcontractors.
- b) The contractor shall not award any work to any subcontractor without prior written approval of the owner, which approval will not be given until the contractor submits to the owner a written statement concerning the proposed award to the subcontractor, which statement will contain such information as the owner may require.
- c) The contractor shall be as fully responsible to the owner for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.
- d) The contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the contractor by the terms of the General Conditions and other contract documents insofar as applicable to the work of subcontractors and to give the contractor the same power as regards to terminating any subcontract that the owner may exercise over the contractor under any provision of the contract documents.
- e) Nothing contained in this contract shall create any contractual relation between any subcontractor and the owner.
- f) Contractor shall comply with the provisions of Minnesota Statutes Section 471.425 Subd. 4a, Contractor shall pay Subcontractor within ten days of Contractor's receipt of payment from Owner for undisputed services provided by such Subcontractor. Contractor shall pay interest of 1½ percent per month or any part of a month to the Subcontractor on any undisputed amount not paid on time to the Subcontractor. Contractor shall pay the actual interest or \$10, whichever is greater, for an unpaid balance of \$100 or more. Contractor shall pay the Subcontractor the actual interest for an unpaid balance of less than \$100.

36. ENGINEER'S AUTHORITY

The engineer shall give all orders and directions contemplated under this contract and specifications relative to the execution of the work. The engineer shall determine the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be paid for under this contract and shall decide all questions which may arise in relation to said work and the construction thereof.

The engineer's estimates and decisions shall be final and conclusive, except as herein otherwise expressly provided. In case any question shall arise between the parties hereto relative to said contract or specifications, the determination or decision of the engineer shall be a condition precedent to the right of the contractor to receive any money or payment for work under this contract affected in any manner or to any extent by such question.

The engineer shall decide the meaning and intent of any portion of the specifications and of any plan or drawings where the same may be found obscure or be in dispute. Any differences or conflicts in regard to their work which may arise between the contractor under this contract and other contractors performing work for the owner shall be adjusted and determined by the engineer.

The contractor is to furnish the engineer or supervisor with all required assistance to facilitate thorough inspection or culling over removal of doubtful or defective material, or for the thorough examination into any of the work performed or for any other purpose required in the discharge of their duties, for which service no additional allowance will be made. The engineer or supervisor may stop the work entirely if there is not sufficient quantity of suitable and approved materials on the site to carry it on properly, or for any good and sufficient cause; also to see that all of the provisions of this contract and specifications are faithfully adhered to, and he shall have the power to dismiss any employee of the contractor for incompetence, intoxication, willful negligence or disregard of orders.

The engineer will not be responsible for the acts of omissions of the contractor, or any subcontractors, or any of his superintendents, agents or employees.

37. USE OF PREMISES AND REMOVAL OF DEBRIS

The contractor expressly undertakes at his own expense:

- a) to take every precaution against injuries to persons or damage to property;
- b) to store his apparatus, materials, supplies and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his work or the work of any other contractors; to place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work;
- c) to clean up frequently all refuse, rubbish, scrap materials, and debris caused by his operations, to the end that all times the site of the work shall present a neat, orderly and workmanlike appearance;
- d) before final payment to remove all surplus material, false-work, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from his operations and to put the site in a neat, orderly condition;
- e) to effect all cutting, fitting or patching of his work required to make the same to conform to the plans and specifications and, except with consent of the engineer, not to cut or otherwise alter work of any other contractor.

38. QUANTITIES OF ESTIMATE

Wherever the estimated quantities of work to be done and materials to be furnished on a unit price basis under this contract are shown in any of the documents including the proposal, they are given for use in comparing bids, and the right is expressly reserved, except as herein otherwise specifically limited, to increase or decrease them as may be deemed reasonably necessary or desirable by the owner to complete the work contemplated by this contract, and such increase or decrease shall in no way invalidate this contract, nor shall any such increase or decrease give cause for claims or liability for damages.

39. LAND AND RIGHTS-OF-WAY

Prior to the start of construction, the owner shall obtain all land rights-of-way necessary for the carrying out and completion of work to be performed under this contract.

It is the obligation of the Contractor to identify the right-of-way boundaries available for the construction of the Work before bidding on the Work. The submission of a bid on the Work constitutes a representation and agreement by Contractor that the right-of-way made available for the Work is sufficient to construct the Work in accordance with the Plans and Specifications. Contractor shall confine its Work and operations to the right-of-way made available by Owner unless Contractor obtains written approval by an affected property owner(s) to utilize additional area beyond the available right-of-way.

40. GENERAL GUARANTEE

Neither the final certificate of payment nor any provision in the contract documents nor partial or entire occupancy of the premises by the owner shall constitute an acceptance of work not done in accordance with the contract documents or relieve the contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The contractor shall remedy any defects in the work and pay for any damage to other work resulting therefrom, which shall appear within a period of one year from the date of final acceptance of work unless a longer period is specified. The owner will give notice of observed defects with reasonable promptness.

41. CONFLICTING CONDITIONS

Any provision in any of the contract documents which may be in conflict or inconsistent with any of the paragraphs in these General Conditions shall be void to the extent of such conflict or inconsistency.

42. NOTICE AND SERVICE THEREOF

Any notice to any contractor from the owner relative to any part of this contract shall be in writing and considered delivered and the service thereof completed, when said notice is posted, by certified or registered mail, to the said contractor at this last given address, or delivered in person to said contractor or his authorized representative on the work.

43. REQUIRED PROVISIONS DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

44. PROTECTION OF LIVES AND HEALTH

In order to protect the lives and health of his employees under the contract, the contractor shall comply with all pertinent provisions of the "Manual of Accident Prevention In Construction" issued by the Associated General Contractors of America, Inc., and shall maintain an accurate record of all cases death, occupational disease, and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on work under the contract.

The contractor alone shall be responsible for the safety, efficiency, and adequacy of his plant, appliances, and methods, and for any damage which may result from their failure or their improper construction, maintenance, or operation.

45. OTHER PROHIBITED INTERESTS

No official of the owner who is authorized in such capacity and on behalf of the owner to negotiate, make, accept or approve, or to take part in negotiating, making, accepting, or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part hereof. No officer, employee, attorney, engineer or inspector of or for the owner who is authorized in such capacity and on behalf of the owner to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

46. USE AND OCCUPANCY PRIOR TO ACCEPTANCE BY OWNER

The contractor agrees to the use and occupancy of a portion or unit of the project before formal acceptance by the owner, provided the owner:

- a) secures written consent of the contractor except in the event, in the opinion of the engineer, the contractor is chargeable with unwarranted delay in completing the contract requirements;
- b) secures consent of the surety;
- c) secures endorsement from the insurance carrier(s) permitting occupancy of the building or use of the project during the remaining period of construction; or
- d) when the project consists of more than one building, and one of the buildings is occupied, secures permanent fire and extended coverage insurance, including a permit from the insurance carrier to complete construction.

47. SUSPENSION OF WORK

Should the owner be prevented or enjoined from proceeding with work or from authorizing its prosecution either before or after its protection, by reason of any litigation, the contractor shall not be entitled to make or assert claim for damage by reason of said delay, but time for completion of the work will be extended to such reasonable time as the owner may determine will compensate for time lost by such delay with determination to be set forth in writing.

48. SURVEYS, STAKES AND BENCH MARKS

The contractor shall give the owner at least 72 hours' notice in writing before requiring any surveys or construction stakes to be set or before commencing work on any portion of the contract, or at any new place, as well as at any place where work has been relinquished or stopped for any cause.

The contractor is responsible for the preservation of all such stakes and bench marks in their proper positions, and in case of any of them being lost, destroyed or obliterated after once having been given, he shall at once notify the owner in writing, and all expense incurred by the owner in replacing the same may be charged against the contractor and deducted from the estimates.

49. ENGINEERING SERVICES BEYOND COMPLETION DATE

In the event the contractor exceeds the specified completion date, all engineering costs incurred after this date shall be paid by the contractor, such as inspection, supervision and any other relative engineering service.

50. DATA PRACTICES CLAUSE

All parties to this contract are subject to the Minnesota Government Data Practices Act, Chapter 13 of the Minnesota Statutes, including Section 13.05, Subd. 11.

51. NON-MINNESOTA CONTRACTORS AND SUBCONTRACTORS

If a non-Minnesota CONTRACTOR or subcontractor enters into a CONTRACT for this Project, and the total amount of the CONTRACT for this Project is greater than \$100,000.00, the non-Minnesota CONTRACTOR or subcontractor will be required to file Form SD-E Minnesota Department of Revenue/Exemption from Surety Deposits for Non-Minnesota Contractors prior to executing the CONTRACT for this Project.