

**STANDARD
CONTRACT DOCUMENTS
AND
TECHNICAL SPECIFICATIONS**



CITY OF NORTHFIELD, MINNESOTA

February 2021

ENGINEERING STANDARD SPECIFICATIONS

CITY OF NORTHFIELD, MINNESOTA

I hereby certify that this plan, specification or report was prepared by me or under my direct supervision and that I am a duly Registered Professional Engineer under State of Minnesota Statutes Section 326.02 to 326.16.

David E. Bennett

Date: February 1, 2021 Minn. Reg. No. 45867

ENGINEERING STANDARD SPECIFICATIONS
CITY OF NORTHFIELD, MINNESOTA

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END OF SECTION

City of Northfield
PROJECT NAME
CLOSING DATE: Thursday, Month Day, Year

ADVERTISEMENT FOR BIDS

NOTICE is hereby given that **SEALED BIDS** for the furnishing of all labor, materials, tools, equipment and services will be received by the Northfield City Clerk at 801 Washington Street, Northfield, MN 55057 until **TIME am. or p.m.** on **Month Day, Year**, for the following City of Northfield Project, all in accordance with applicable Minnesota Statutes, Northfield City Code and City approved project plans and specifications and the Bidding Documents:

LOCATION: Street Name from XXX Street to XXX Street

TYPE OF WORK: {TBD per project}

The major items of work are approximately:

Bids will be publicly opened and read aloud at that time and place stated above. Bids received after that time will not be accepted.

Plans and Specifications for the project may be examined at the City of Northfield Engineering office, 801 Washington Street, Northfield, MN 55057. Plans and Specifications may be downloaded for no charge from the City of Northfield web site at: <http://www.ci.northfield.mn.us/assets/p/projects/index.html>.

Copies of the Plans, and Specifications may be purchased at the Northfield Engineering office. Cost - \$ _____ (non-refundable incl. tax).

Bids must be sealed, identified on the envelope and accompanied by a Bidder's Bond or Certified Check in an amount equal to at least 5% of the total bid made payable to the City of Northfield City Clerk.

No bid shall be withdrawn for a period of thirty (30) days subsequent to the opening of bids without the consent of City of Northfield, Minnesota.

The successful Bidder will be required to furnish and pay for a satisfactory performance and payment bonds in the full amount of the awarded bid.

The City reserves the right to reject any or all bids and to waive any irregularities thereof.

Dated this Day day of Month, Year
City Clerk, City of Northfield, MN

Publish in Northfield News – Month Day, Year, Month Day, Year, and Month Day, Year

Publish on City of Northfield Engineering Website: Month Day, Year – Month Day, Year

Publish on MnDOT E-Advert Site: Month Day, Year – Month Day, Year

INSTRUCTIONS TO BIDDERS

DEFINED TERMS

Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and any Supplementary Conditions.

COPIES OF BIDDING DOCUMENTS

Copies of the Bidding Documents may be obtained for the Bidder's individual use by applying to the Owner, City of Northfield, Engineering Division, 801 Washington Street, Northfield, Minnesota 55057, or as otherwise indicated in the Advertisement for Bids, and by depositing the amount indicated in said Advertisement. The most recent version of the "Engineering Standard Specifications, City of Northfield, Minnesota" are an integral part of the Bidding Documents.

The Owner assumes no responsibility for errors or misinterpretations resulting from Bidder's use of electronic downloadable Bidding Documents (Electronic Bidding Documents).

BIDDERS' KNOWLEDGE

Bidders must familiarize themselves with all local ordinances and state and federal statutes pertaining to the proposed construction, and examine and determine for themselves the location and nature of the proposed Work, and the amount and character of the labor and materials required therefor, and the difficulties which may be encountered.

Bidders shall acquaint themselves with any and all changes in specifications and changes in methods or procedures or policies as may be set forth in the Bidding Documents.

Any bidder who in doubt as to the true meaning of any part of the plans, specifications or other Bidding Documents, may submit to the Engineer a written request for an explanation or interpretation thereof at least seven (7) days prior to the scheduled Bid opening. The Bidder submitting the request will be responsible for prompt delivery of such request. Any such explanation or interpretation shall be made only by a duly issued Addendum and a copy of such Addendum shall be mailed or delivered to each person receiving a set of Bidding Documents. No Bidder shall be entitled to rely upon any other explanation or interpretation. If, after the Bids have been delivered to the Owner, any difference of opinion shall arise as to the true intent or meaning of any part of the specifications, the decision of the Engineer shall be final, conclusive and binding on all parties.

All Bids shall be made and received with the express understanding that the Bidder accepts and agrees to the terms and conditions contained in these Instructions, the plans and specifications, the forms of contract and bonds, and any other Bidding Documents.

QUALIFICATIONS OF BIDDERS

If requested, Bidders must present satisfactory evidence that they are familiar with the class of Work specified, and that they have the necessary capital, tools, machinery and other equipment necessary to conduct the Work and complete the Project improvements within the time specified in the proposal, in a good and Workmanlike manner and to the entire satisfaction of the Owner. Failure on the part of any Bidder to satisfactorily carry out previous contracts or the Bidder's lack of experience or equipment necessary for the satisfactory completion of the project may be deemed sufficient cause for disqualification of the Bidder and/or rejection of the Bid.

Before the successful Bidder may commence Work, the successful Bidder must file with the Engineer satisfactory certificates, in duplicate, showing insurance coverage to the extent and in the amounts required by the Bidding Documents.

No person will be permitted to commence Work until authorization by the Owner to proceed has been received in writing by the Contractor.

RESPONSIBLE CONTRACTOR VERIFICATION OF COMPLIANCE

Pursuant to Minnesota Statutes § 16C.285, Bidders are hereby advised that the Owner 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 Bid for this Project must verify that it meets the minimum criteria specified in Minnesota Statutes § 16C.285, subdivision 3, by completing the Responsible Contractor Verification of Compliance provided in the Bidding Documents.

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 Contract for this Project and may result in the termination of a Contract awarded to a Bidder or subcontractor that makes a false statement.

PREPARATION AND SUBMISSION OF BID

The Bid Form is included with the Bidding Documents. Additional copies may be obtained from the Engineer.

All blanks on the Bid Form shall be completed in ink and the Bid Form shall be signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each item listed therein. In the case of optional alternatives, the words "No Bid," "No Change," or "Not Applicable" may be entered.

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

All Bids must be made in ink upon the separate Bid Form included in the specifications, must give prices for each item and aggregate amount of the Work, and must be signed and acknowledged by the Bidder in

accordance with the directions on the Bid Form. In order to ensure consideration, the Bid shall be enclosed in a sealed envelope addressed to the Owner and clearly marked as to the time and date of Bid opening and identification of the Project. If submitted by mail, the sealed envelope containing the Bid must be enclosed in another envelope addressed to the Owner.

Each Bid must contain the full name or names and post office address(es) of the Bidder or Bidders, and any persons who sign a Bid as agent of another, or of a firm, may be required to furnish satisfactory evidence of their authority to do so. The Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the Project is located, or Bidder shall covenant in writing to obtain such authority and qualification prior to award of the Contract and attach such covenant to the Bid. Bidder's state contractor license number, if any, shall also be shown on the Bid Form.

The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.

Postal and e-mail addresses and telephone number for communications regarding the Bid shall be shown.

A partnership which submits a Bid must give the full names and addresses of all partners, must identify itself as a partnership, must identify the state in which it was formed, and must be signed by at least one partner accompanied by evidence of authority to sign. The official address of the partnership shall be shown.

If a limited liability company submits a Bid, the Bid shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.

When an unincorporated firm other than a partnership submits a bid, the names, addresses and signatures of all individual members of the firm shall be provided, and any other name under which the firm does business must be clearly identified.

If a corporation submits a Bid, the Bid must be signed in the name and under the seal of the corporation by two duly authorized officers or agents of the corporation, and must identify the state of incorporation and the corporation's address. Such officers or agents may be required to present satisfactory evidence that they have authority to sign the Bid. In the event that any corporation organized and doing business under the laws of a foreign state is the successful Bidder, such corporation shall present evidence that it is authorized to do business in the State of Minnesota before the Agreement is executed.

A Bid by an individual shall show the Bidder's name and official address.

A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid Form. The official address of the joint venture shall be shown.

All names shall be printed in ink below the respective signature(s).

More than one Bid from an individual, firm, partnership, limited liability company, or corporation under the same or different names will not be considered. Evidence that any Bidder is interested in more than one Bid for the same Work will be considered sufficient cause for the rejection of all Bids so affected, provided that a party who has quoted prices to a Bidder is not thereby disqualified from quoting prices to other

Bidders, or from submitting a direct Bid on its own behalf.

Unless otherwise specifically provided in the specifications for the Project, Bids must be made upon each and every item shown on the Bid Form, including all alternate items.

Bids received by facsimile transmission will not be considered. However, Bids already properly submitted may be modified by facsimile transmission received prior to the time specified in the Advertisement for Bids.

Modifications shall be submitted as such, and shall not reveal the total amount of either the original or revised Bid. No modifications to a submitted Bid will be accepted after the date and time for the opening of Bids.

ALTERNATES / ALTERNATIVES

All bids must include a bid based on the "base bid" or the Contract Documents defined alternatives, as specified, without anticipation of the use of "or equal" items or contractor proposed alternatives. Bids solely based on the use of "or equal" items or contractor proposed alternatives may be rejected without consideration, at the discretion of the Owner. Installers wishing to qualify alternate methods and/or materials for this project must submit a copy of the license or certificate verifying the manufacturer's or licensor's approval, and evidence of the installer's experience including the number, total length, and locations of trenchless construction projects installed to date using the proposed materials and methods together with the names and phone numbers of facility owners to the Engineer 10 days prior to the opening of bids to allow time for evaluation. The final decision to accept or reject the applicant lies solely with the Owner.

PROPOSALS WITH SPECIFIED BID ALTERNATES: The Owner reserves the right to select the bid alternate desired, regardless of the amount bid.

CONTRACTOR PROPOSED ALTERNATIVES: Contractor proposed alternative methods and techniques may be considered by the Owner, with the advice of the Engineer, after Award of Contract. No alternatives shall be accepted or considered as part of the bid. The Contractor shall include in its base bid the items, as specified, without consideration of using any proposed alternative materials and/or methods. The Contractor shall then include in its bid the amount of the deduction, increase or revised bid amount to be applied if the proposed alternative materials and methods are accepted. The Owner and Engineer shall evaluate the stature of the proposed materials and methods. Evaluation by the Owner and Engineer shall include the cost of modifying the design, as necessary and shall be at the discretion of the Owner and Engineer.

The Owner reserves the right to accept or reject "Contractor Proposed Alternatives". Execution of alternates and alternatives proposed by the Contractor, if accepted by the Owner, shall be governed by those Specifications provided by the Engineer.

SPECIFICATION REFERENCES - CONTRACTOR PROPOSED ALTERNATIVES: If the Bidder proposes an alternative:

1. The Contractor is required to request, in writing, a determination on the Specifications, which will be enforced to govern the construction. This request shall be made directly to the Engineer at the time of bid opening or before.

2. The Engineer shall attempt to provide the Specification requirements prior to the end of the working day to allow the Contractor time to withdraw its bid, if requested by the Contractor.

SUBMITTALS: Unless otherwise specified, contractors whose bids are based on "equal" materials and/or methods shall include with their bid the manufacturer name, address, product name, model, specification reference and/or testing certification of the items proposed to be used. The Contractor shall also include evidence of the 'equal' stature of the products proposed.

CONTRACTOR PROPOSED ALTERNATIVES: The Contractor shall contact the Engineer prior to bidding the job to discuss its proposed alternative approach to the methods and materials used or execution of the job. The Engineer shall evaluate the proposed methods and may at the Engineer's discretion choose to issue an addendum to all contractors or accept the conversation as privileged communication. Unless otherwise specified, the Contractors whose bid includes alternative materials and/or methods shall include with their bid the manufacturer name, address, product name, model, specification reference and/or testing certification of the items proposed to be used. The Contractor shall also include evidence of the 'equal' stature of the products and/or methods proposed. The Contractor shall mark the outside of the bid envelope that alternative methods are included.

BIDDERS TO INVESTIGATE SITE AND REVIEW DOCUMENTS

Bidders are required to submit their Bids upon the following express conditions, which shall apply to and become part of every Bid received:

1. Bidders shall examine and carefully study the Bidding Documents, and the other related data identified in the Bidding Documents;
2. Bidders shall become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
3. Bidders shall visit the Project site and become familiar with and satisfy Bidder as to the general, local, and site conditions that may affect cost, progress, and performance of the Work.
4. Bidders shall satisfy themselves and form their own opinions by personal examination of the Project site, location and ground of the proposed Work, and by such other means as they may desire, as to the actual conditions and requirements of the Work, including the materials to be excavated and other subsurface conditions affecting the Work; shall make their own interpretations and satisfy themselves by their own investigation and research regarding all conditions affecting the Work to be done and the labor and materials needed; and shall make their Bids in sole reliance thereon.
5. Any information or data concerning surface and subsurface conditions furnished by the Owner or its representatives is furnished for the convenience of the Bidders and is not guaranteed.
6. Bidders shall thoroughly examine and familiarize themselves with the drawings, plans and specifications, reports, Supplementary Conditions, Special Provisions, and all other Bidding Documents. The Contractor, by the execution of the Agreement, shall in no way be relieved of any obligation due to its failure to receive or examine any pertinent documents or to visit the site and

acquaint itself with the existing conditions.

7. Bidders agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
8. The Owner will be justified in rejecting any claim based on facts which the Contractor could have discovered through the investigation and review required herein.
9. Bidders shall promptly notify the Engineer in writing of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that written resolution thereof by the Engineer is acceptable to Bidder.

The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of these Instructions, that without exception the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given the Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by the Engineer are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

BID SECURITY

Each Bid shall be accompanied by a Bid Security in the form of a bank money order, certified check or Bid bond, payable to the order of the Owner, in an amount of five percent (5%) of the total amount of the Bid. No Bid will be considered unless accompanied by the Bid Security.

If alternate Bids are called for which utilize several different classes of material or types of improvement for the same Work, one Bid Security in the amount of five percent (5%) of the total amount of the highest Bid will be sufficient for all Bids.

As soon as the Bids have been tabulated, all Bid Security shall be returned to all of the Bidders except the three lowest Bidders whose Bid Security shall be retained until the Agreement has been signed by the successful Bidder and the required performance and payment bonds and required insurance certificate(s) have been filed, approved, and accepted by the Owner. Thereafter, the Bid Security shall be returned to the successful Bidder.

If a successful Bidder fails to enter into such Agreement in accordance with its accepted Bid, or fails to furnish the required performance and payment bonds and insurance certificate(s) within fifteen (15) days after Notice of Award, Owner may consider successful Bidder to be in default, annul the Notice of Award, and the Bid Security of that Bidder will be forfeited to the Owner.

WITHDRAWAL OF BIDS

Any Bid may be withdrawn prior to the scheduled date and time for the opening of Bids or authorized postponement thereof.

After the scheduled date and time for opening of Bids, Bidders may not withdraw or cancel their Bids (1) for a period of sixty (60) days or (2) until all of the bids submitted have been canvassed, a contract awarded, the Agreement signed, and the required bonds and insurance certificate(s) furnished and approved, whichever comes first. Should there be reasons why the Agreement cannot be signed or the bonds and/or insurance submitted and/or approved within the 60-day period, the period may be extended by mutual agreement between the Owner and the successful Bidder.

Notwithstanding the foregoing, if within 24 hours after Bids are opened any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid, and the Bid Security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.

BASIS OF BID; COMPARISON OF BIDS

Lump Sum. Bidders shall submit a Bid on a lump sum basis for the base Bid and include a separate price for each alternate described in the Bidding Documents as provided for in the Bid Form. The price for each alternate will be the amount added to or deleted from the base Bid if Owner selects the alternate. In the comparison of Bids, alternates will be applied in the same order as listed in the Bid form.

Unit Price. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the Bid schedule. The total of all estimated prices will be the sum of the products of the estimated quantity of each item and the corresponding unit price. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Bids will be evaluated and the low Bidder determined as provide below.

EVALUATION OF BIDS

The Bids from each responsible Bidder will be considered on the basis of the total amount, as shown on the Bid Form.

If a contract is awarded, award will be made on the basis of the lowest responsive, responsible, qualified Bidder determined by the total Bid, which is found by the City to be in the best interest of the Project. The total Bid will include the Base Bid and any combination of Alternate Bids selected.

The Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Without limiting the generality of the foregoing, any Bid which is incomplete, obscure, or irregular may be rejected, any Bid having erasures or corrections in the price sheet may be rejected, any Bid which omits an amount on any one or more items in the price sheet may be rejected, any Bid in which unit prices are obviously unbalanced may be rejected, any Bid accompanied by an insufficient or irregular Bid Security may be rejected, and any Bid which omits acknowledgment of the receipt of addenda may be rejected.

The Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to not be responsible. Owner may also reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder. Owner also reserves the

right to waive all informalities not involving price, time, or changes in the Work and to negotiate contract terms with the Successful Bidder.

The Owner may make such investigations as it deems necessary to determine the ability of the Bidder to perform the Work, and the Bidder shall furnish to the Owner all information and data for this purpose as the Owner may request. As a condition of its Bid, Bidder is required to waive any and all claims of whatever nature against Owner and its officials, employees and agents, which arise out of or relate to such investigations and statements made as a result thereof, except for statements that can be shown by clear and convincing evidence to be intentionally false and made with actual malice.

The low responsible and qualified bidder must supply the names and addresses of major material suppliers and Subcontractors when requested to do so by the Owner or as otherwise required by law. 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.

AWARD OF CONTRACT, EXECUTION OF AGREEMENT, AND NOTICE TO PROCEED

Following acceptance of the successful Bid by the Owner, a Notice of Award will be mailed to the successful Bidder together with a prepared Agreement for signature and return. The Notice of Award is not an order to proceed. The successful Bidder will have no authority to perform Work under the Agreement until a Notice to Proceed has been issued by the Engineer.

Within fifteen (15) days of the date on which the successful Bidder receives the Notice of Award, the successful Bidder shall sign and return the Agreement along with the required performance and payment bonds and insurance certificate(s) in amounts as indicated in the General Conditions and Agreement.

In the case of failure of the bidder to execute the Agreement or provide the required documents, the Owner may at its option consider the Bidder in default, in which case the Bid Security accompanying the Bid shall be forfeited to the Owner.

The Agreement will be executed by the Owner after the required bonds and certificate(s) are submitted and have been approved by the Owner.

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

The Owner, within 10 days of receipt of acceptable performance and payment bonds, insurance certificate(s), and Agreement signed by the party to whom the contract 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 by written notice withdraw its consent to the signed Agreement and will not then be bound thereby. Such notice of withdrawal shall be effective upon receipt of the notice by the Owner.

A Notice to Proceed shall be issued within 10 days of the execution of the Agreement by the Engineer. Should there be reasons why the Notice to Proceed cannot be issued within such period, the period may be extended by mutual agreement between the Owner and the Contractor. If the Notice to Proceed has not been issued within the 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.

A pre-construction conference shall be held in accordance with Section 01 31 19

LIQUIDATED DAMAGES

Provisions for liquidated damages, if any, are set forth in the Agreement.

SCHEDULE

All work under the Agreement must be substantially complete by **Month Day, Year**. Substantial completion shall be defined as all work with the exception of the construction of the bituminous wearing course and the final adjustment of manholes and gate valves.

Dates of events to be aware of:

[note to user: enter specific dates of events that contractor may need to coordinate with]

The Project shall be constructed in phases as shown in the construction plans or as approved by the Engineer. In addition, each phase shall have the bituminous base course constructed prior to removal of pavement of the subsequent phase unless authorized by the Engineer. Required phasing is as follows:

[note to user: enter milestone information here]

Final completion must be complete by **Month Day, Year**.

Liquidated damages shall be one thousand five hundred dollars (\$X,XXX) for each working day the work is not completed according to the project milestones and substantial completion dates indicated in this Agreement. After substantial completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Schedule for completion and readiness for final payment, Contractor shall pay Owner one thousand dollars (\$X,XXX) for each working day that expires after such time until the Work is completed and ready for final payment.

PERFORMANCE BOND

CONTRACTOR *(name and address)*:

SURETY *(name and address of principal place of business)*:

OWNER *(name and address)*:

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location)*:

BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract)*:

Amount:

Modifications to this Bond Form: None See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal *(seal)*

Surety's Name and Corporate Seal *(seal)*

By: _____
Signature

By: _____
Signature *(attach power of attorney)*

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

EJCDC® C-610, Performance Bond

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1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the

Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

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

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

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

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

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PAYMENT BOND

CONTRACTOR *(name and address)*:

SURETY *(name and address of principal place of business)*:

OWNER *(name and address)*:

CONSTRUCTION CONTRACT

Effective Date of the Agreement: Amount:

Description *(name and location)*:

BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract)*:

Amount:

Modifications to this Bond Form: None See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

_____ *(seal)*

_____ *(seal)*

Contractor's Name and Corporate Seal

Surety's Name and Corporate Seal

By: _____

By: _____

Signature

Signature *(attach power of attorney)*

Print Name

Print Name

Title

Title

Attest: _____

Attest: _____

Signature

Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants who do not have a direct contract with the Contractor,
 - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

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

15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

16.1 **Claim:** A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the person for whom the labor was done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
4. A brief description of the labor, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of

the Claim;

7. The total amount of previous payments received by the Claimant; and

8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.

17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18. Modifications to this Bond are as follows:

BID FORM

Proposal of _____ (hereinafter called "Bidder"), organized and existing under the laws of the State of _____, doing business as _____,¹ to the City of Northfield, Minnesota (hereinafter called "Owner").

PROJECT NAME

Project No. _____ (the "Project")

BID RECIPIENT

This Bid is submitted to:

Name of Owner: City of Northfield

Address of Owner: 801 Washington Street, Northfield, MN 55057

The undersigned Bidder proposes and agrees, if this Bid is accepted by Owner, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents and the Agreement.

BIDDER’S ACKNOWLEDGEMENTS, REPRESENTATIONS AND CERTIFICATIONS

Bidder accepts all of the terms and conditions of the Instructions to Bidders. This Bid will remain subject to acceptance by Owner for 60 days after the Bid opening, or for such longer period of time that Bidder and Owner may agree to in writing.

In compliance with Owner’s Advertisement for Bids, Bidder hereby proposes to perform all Work for the construction of the Project, in strict conformance and accordance with the Bidding Documents and Agreement, within the time set forth therein, and at the prices stated below.

By submission of this Bid, Bidder (and in the case of a joint Bid, each party thereto with respect to its own organization) certifies that this Bid has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this Bid with any other Bidder or with any competitor. Bidder certifies that Bidder has not either submitted nor induced any other Bidder to

1. Insert "a corporation", "a limited liability company", "a partnership", or "a sole proprietorship" as applicable.

submit a false or sham bid, or engaged in any corrupt, fraudulent, collusive, or coercive business practices in submitting this Bid.

Bidder hereby agrees to commence Work pursuant to the Bidding Documents and Agreement on or before the date specified in the Agreement or at such a date to be specified in the Notice to Proceed, and to fully complete the Work within the time specified. Bidder further accepts and agrees to pay liquidated damages under the terms and in the amount set forth in the Bidding Documents in the event the Work is not timely completed.

Bidder has examined and carefully studied the Bidding Documents, the Project including applicable reports related to the same, the Agreement, other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged by Bidder by writing in the number and dates of addenda:

Addendum No.	Addendum Date
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Bidder has visited the Project site and become familiar with and is satisfied as to the Project site conditions, which may affect the cost, progress, and performance of the Work.

BID

Bidder agrees to perform and complete all the Work in accordance with and as described in the Bidding Documents and Agreement for the following unit price(s) or lump sum:

(Insert Bid Form)

AWARD OF BIDS

In submitting this Bid, it is expressly understood that the right is reserved by the Owner to reject any and all bids.

ATTACHMENTS TO THIS BID

The following documents are submitted with and made a part of and condition of this Bid:

1. Required Bid security;
2. Responsible Contractor Certification;
3. First-Tier Subcontractor List;
4. Evidence of authority to do business in the state of the Project; or a written covenant to obtain such license within the time for acceptance of Bids.

Respectfully submitted:

Bidder Name

By: _____
Signature Title

Name of Authorized Signer

Address

Date

License Number (if applicable)

By: _____
Signature Title

Name of Authorized Signer

Address

Date

License Number (if applicable)

Note: Two (2) corporate officers must sign if Bidder is a corporation.

State of _____)

) ss.

County of _____)

The foregoing instrument was acknowledged before me by _____
and _____, the _____ and _____
of _____, this _____ day of _____, 20 ____.

(Stamp)

Notary Public

My Commission Expires _____

RESPONSIBLE CONTRACTOR VERIFICATION OF COMPLIANCE

Minn. Stat. § 16C.285

The undersigned, being first duly sworn under oath, as a contractor responding to a solicitation document of a contracting authority on the Project, represents, certifies, verifies and swears under oath, as follows:

1. The undersigned complies with each of the minimum criteria in Minn. Stat. § 16C.285, subd. 3, with the exception of clause 7, the “Responsible Contractor” statute.
2. The undersigned understands that a failure to meet or verify compliance with the required minimum criteria contained in Minn. Stat. § 16C.285, subd. 3 for a “Responsible Contractor” as defined therein, renders a bidder ineligible to be awarded a construction contract for the Project or to perform work on the Project.
3. A list of all of the first-tier subcontractors that the undersigned intends to retain for work on the Project is attached hereto as Attachment A.
4. If the undersigned is awarded a contract on the Project, prior to execution of a construction contract, and as a condition precedent to the execution of a construction contract, the undersigned shall additionally submit to the contracting authority a supplemental verification under oath also confirming compliance with Minn. Stat. § 16C.285, subd. 3, clause (7), Attachment B.
5. The undersigned understands that a false statement under oath verifying compliance with any of the minimum criteria contained in Minn. Stat. § 16C.285, subd. 3, shall make the undersigned, or its subcontractor that makes the false statement, ineligible to be awarded a construction Project and may result in termination of a contract awarded to the undersigned or its subcontractor that submits a false statement.

CONTRACTOR:

Date: _____ By: _____

It's: _____

ATTACHMENT A

FIRST-TIER SUBCONTRACTORS LIST

First-Tier Subcontractor Name (Legal name of company as registered with the secretary of state of the state of origin)	First-Tier Subcontractor Address (Street address, city, state and zip code)
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	

ATTACHMENT B
SUPPLEMENTAL VERIFICATION

Minn. Stat. § 16C.285

Project Name: _____

Prior to execution of a construction contract, and as a condition precedent to the execution of a construction contract, the undersigned prime contractor shall submit to the contracting authority a supplemental verification under oath confirming compliance with Minn. Stat. § 16C.285, subd. 3, clause (7).

The undersigned, being an owner or officer of a contractor responding to a solicitation document of a contracting authority on the above-named Project, hereby represents, certifies and verifies under oath as follows:

1. The undersigned meets and is in compliance with each of the minimum criteria contained in Minn. Stat. § 16C.285.

2. The undersigned has obtained from all subcontractors and any additional subcontractors with which it will have a direct contractual relationship a signed statement under oath by an owner or officer thereof verifying that each subcontractor or additional subcontractor meets all of the minimum criteria to be a responsible contractor as defined in Minn. Stat. § 16C.285.

CONTRACTOR:

Date: _____ By: _____

It's: _____

AGREEMENT

THIS AGREEMENT (“Agreement”), made this _____ day of _____, 20____, by and between _____, a Minnesota corporation, _____, MN 55_____, (hereinafter referred to as the “Contractor”), and the City of Northfield, a municipal corporation under the laws of the State of Minnesota, 801 Washington Street, Northfield, MN 55057, (hereinafter referred to as the “City”); (collectively referred to as the “Parties”).

WITNESSETH:

Whereas, City requires services and materials for the _____ Project (the “Project”); and

Whereas, Contractor agrees to provide the services and materials required by City.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

1. **Scope of Services.** The Contractor does hereby agree to perform the work of the _____ Project for the City of Northfield, Minnesota, and to provide all labor and materials required therefor.

All in strict accordance with the Specifications covering the same, dated _____, 20____, prepared by _____, Engineer, and which are on file with the City Clerk of the City.

This Agreement consists of the following component parts, all of which are fully a part of this Agreement as if herein set out verbatim, or if not attached, as if hereto attached, to-wit:

- a. This Agreement
- b. General Conditions
- c. Supplementary Conditions
- d. Aforesaid Specifications.
- e. Drawings.
- f. Addenda
- g. Bid Form submitted by Contractor.

In the event that any of the provisions in any of the above component parts of this Agreement conflict with any provisions in any of the other component parts, the provisions in the component part first enumerated above shall govern over any other component part which follows it numerically, except as may be otherwise specifically stated.

All of the Contractor's work and labor shall be subject to the inspection and approval of the employee or agent designated by the City to supervise the work. If any materials or labor are rejected by the designated employee or agent as defective or unsuitable, then the materials shall be removed and replaced with other approved materials and the labor shall be done to the satisfaction and approval of the designated employee or agent at the Contractor's sole cost and expense.

The Contractor shall replace at the Contractor's expense any loss or damage to the Project, however caused, which occurs during the construction thereof or prior to the final delivery to and acceptance of the Project by the City. Any payment made to the Contractor, shall not be construed as operating to relieve the Contractor from responsibility for the construction and delivery of Project.

Unless approved by the City in writing, the Contractor shall make no claim for extra work done or materials furnished, nor shall the Contractor do any work or furnish any materials not covered by the plans and specifications of this Agreement. Any such work or materials furnished by the Contractor without written City approval, is at the Contractor's own risk and expense. When any extra work or materials is ordered by the City, the Contractor and City shall agree in writing to the scope of the extra work or materials and the compensation to be paid for the extra work to be performed or materials. The Contractor shall perform any altered plans ordered by the City; if such alteration reduces the cost of doing such work, the actual amount of such reduction shall be deducted from the contract price for the work.

2. **Payment Amount.** The City shall pay to the Contractor for the performance of this Agreement the sum of _____ and ___/100ths

Dollars (\$ _____ . ____), payment to be made to the Contractor in accordance with and subject to the provisions embodied in the documents made a part of this Agreement.

Based upon Applications for Payment submitted to the City by the Contractor, if the Contractor properly performs the work, the City shall, from month to month, before completion of the work, make progress payments to Contractor up to 95 percent of the amount already earned under the Agreement, upon the estimate of the engineer or other competent person selected by the City. When the work is 95 percent or more completed, upon the recommendation of the designated City employee or agent, such portions of the retained price shall be released as the City determines it need not be retained to protect the interest of the City in the satisfactory completion of the Agreement. The balance shall be retained by the City until the final performance and completion of this Agreement by the Contractor to the satisfaction, approval, and acceptance of the City including provision by the Contractor of Minn. Dept. of Revenue Form IC-134 or other authorized proof of the Contractor's compliance with applicable state laws. Failure to pay any amount due and payable under the terms of this Agreement within 30 days of a monthly estimate or within 90 days after the final estimate of the amount earned shall obligate the City to pay to the Contractor simple interest on the past due amount at an annual rate equal to the monthly index of long-term United States Government bond yields for the month prior to the month in which this obligation is incurred, plus an additional 1 percent per annum. Interest shall not be payable with respect to any amount which the City may legally withhold as a result of breach of contract or other contractual claim or if the delay is caused by the Contractor.

3. **Bond.** The Contractor agrees to furnish a Performance Bond in the amount of \$ _____ . ____ and a Payment Bond in the amount of \$ _____ . ____ in favor of City for the use of the City and of all persons doing work or furnishing skill, tools, machinery, materials, or insurance premiums under or for the purpose of this Agreement, to secure the faithful performance of this Agreement by the Contractor and to be conditioned as required by Minn. Stat. §§

574.26 to 574.32.

All Contractor bonds shall be furnished by the Contractor in a form and with a Surety company authorized to do business in Minnesota and satisfactory to the City.

The Contractor agrees to pay all laborers employed and all subcontractors furnishing material to the Contractor in the performance of this Agreement. If the Contractor fails to pay any claims and demands for labor and materials, the City may, in its sole discretion, apply the monies due to the Contractor toward paying and satisfying such claims and demands. The City has the right to apply monies due to the Contractor towards paying any accrued indebtedness or any claim which may hereafter come due against the Contractor. The amount of such payments shall be deducted from the balance due to the Contractor; provided that nothing herein nor any variation from the amounts and timing of the installments shall be construed as impairing the right of the City or of those to whose benefit the bond herein agreed upon shall insure, to hold the Contractor or surety liable on the bond for any breach of the conditions of the same nor as imposing upon the City any obligation to laborers, materialmen, contractors, or sureties to pay or to retain for their benefit any monies coming to the Contractor hereunder.

4. **Commencement and Completion of Work.** The Contractor hereby agrees to commence and complete work in accordance with the plans and specifications for the Project.

If the Contractor fails to complete the Project by said date, unless excused by written consent of the City, the City shall have the right to deduct from any money due or which may become due to the Contractor, the amount of One Thousand Dollars (\$1,000) per day between the time stipulated for the completion and the actual date of completion. If no monies are due to the Contractor, the City shall have the right to recover such sum as liquidated damages. In addition to such liquidated damages, the Contractor agrees to pay all costs of local superintendence of the work during such delay. The Contractor agrees to notify the City in writing of any cause of delay of the Project within 24 hours

after such cause of delay arises. If the Contractor fails to complete the Project by the time hereinbefore specified, the City may immediately, or at any time thereafter, proceed to complete the Project at the Contractor's expense. If the Contractor gives written notice of a delay over which the Contractor has no control, the City may at its discretion, extend the completion date, and in such case the Contractor shall become liable for liquidated damages and costs of local superintendence only after the extended completion date.

5. **Permits.** Contractor shall obtain and pay for all permits, fees and licenses necessary and ordinary for the work, shall comply with all lawful requirements applicable to the work, and shall give and maintain any and all notices required by applicable law pertaining to the work.

6. **Taxes.** Contractor shall pay any applicable state sales taxes and shall also be responsible for the payment of any and all payroll taxes and contributions for unemployment compensation insurance and Social Security which are measured by the wages, salaries or other remunerations paid to employees of the Contractor and shall submit evidence of same to City when requested.

7. **Independent Contractor.** Contractor agrees that it is performing this Agreement as an independent contractor for the City. Contractor agrees that it is solely responsible for supervision and direction of the work performed under this Agreement by its employees, agents, and subcontractors. Contractor acknowledges that it serves as sole employer with respect to any of the employees employed by it for performance of such work, and is responsible for the methods and manner of such work performed under this Agreement.

8. **Mechanic's Liens.** The Contractor hereby covenants and agrees that Contractor will not permit or allow any mechanic's or materialman's liens to be placed on the City's interest in the Property that is the subject of the Project during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on the City's interest, the Contractor

shall take all steps necessary to see that it is removed within thirty (30) days of its being filed; provided, however, that the Contractor may contest any such lien provided the Contractor first posts a surety bond, in favor of and insuring the City, in an amount equal to 125% of the amount of any such lien.

9. **Indemnification.** The Contractor shall indemnify, protect, save, hold harmless and insure the City, and its respective officers, directors, employees and members and agents, from and against any claims, liability, damages, costs, judgments, or expenses, including reasonable attorney's fees, to the extent attributable or caused by the negligent or otherwise wrongful act or omission, including breach of a specific contractual duty, of the Contractor or the Contractor's independent contractors, subcontractors, agents, employees, vendors or delegates with respect to this Agreement or the Project. The Contractor agrees to take all precautions necessary to protect the public against injury, and to keep danger signals out at night and at such other times and such places as public safety may require. Contractor shall defend the City against the foregoing, or litigation in connection with the foregoing, at Contractor's expense, with counsel reasonably acceptable to the City. The City, at its expense, shall have the right to participate in the defense of any claims or litigation and shall have the right to approve any settlement, which approval shall not be unreasonably withheld. The indemnification provision of this Paragraph shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of the City. All indemnification obligations shall survive termination, expiration or cancellation of this Agreement. Contractor agrees, that in order to protect itself and the City under the indemnity provisions set forth above, it will at all times during the term of this Agreement keep in force policies of insurances required in the paragraph entitled, "Insurance." Nothing in this Agreement shall be construed to waive any immunities or limitations to which the City is entitled under Minn. Stat. Chapter 466 or otherwise.

10. **Term and Termination.**

- a. **Term.** This Agreement shall be in effect until such time as the Project is completed, _____, 20___, or as otherwise provided in this Agreement, whichever comes first.
- b. **Termination.** This Agreement may be terminated by either party for any reason or for convenience by either party upon ten (10) days written notice. In the event of termination under this paragraph, City shall be obligated to Contractor for payment of amounts due and owing including payment for services performed or furnished to the date and time of termination.
- c. **False Statement.** Notwithstanding any term or condition contained herein, this Agreement may be terminated by the City at any time upon discovery by the City that the prime contractor or subcontractor, as those terms are defined in statute, has submitted a false statement under oath verifying compliance with any of the minimum criteria set forth in Minnesota Statutes, section 16C.285, subdivision 3.

11. **Default.** If at any time the City determines that the performance of the work under this Agreement is being unnecessarily delayed, that the Contractor is violating any of the conditions of this Agreement, or that it is executing the same in bad faith or otherwise not in accordance with the terms of said Agreement; or if the work is not substantially completed within the time named for its completion or within the time to which such completion date may be extended; then this shall constitute default and the City may serve written notice upon the Contractor, and its surety if a performance bond has been executed, of the City's intention to terminate this Agreement. Unless within one week after the serving of such notice a satisfactory arrangement is made for continuance, City may immediately cancel this Agreement or exercise any other rights or remedies available to the City under this Agreement or law. In the event of Contractor's default, Contractor shall be liable to the City for any and all costs, disbursements, attorneys and consultant fees reasonably incurred by City in

enforcing this Agreement.

12. **GENERAL TERMS:**

- a. **Voluntary and Knowing Action.** The Parties, by executing this Agreement, state that they have carefully read this Agreement and understand fully the contents hereof; that in executing this Agreement they voluntarily accept all terms described in this Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound hereby.
- b. **Authorized Signatories.** The Parties each represent and warrant to the other that (1) the persons signing this Agreement are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Agreement against it; each Party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
- c. **Guarantee.** The Contractor further agrees to guarantee all materials and parts supplied under this Agreement against inferiority as to specifications, such guarantee to be unconditional. It is agreed and understood by the Parties hereto that the use of said work and improvement Project at any time by the City for any purposes shall not be construed to be or operate as an acceptance by the City of the work or Project to be done by the Contractor under this Agreement.
- d. **Assignment.** This Agreement may not be assigned by either party without the written consent of the other Party.
- e. **Modifications/Amendment.** Any alterations, variations, modifications, amendments or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing, and signed by authorized representative of the City and Contractor.
- f. **Non-Discrimination.** The provisions of any applicable law or ordinance relating to

civil rights and discrimination shall be considered part of this Agreement as if fully set forth herein. The Contractor shall not discriminate in the hiring of labor for the performance of any work under this Agreement or any subcontract hereunder or in selecting a material supplier or vendor on the basis of race, creed, color, sex, or national origin; and shall not discriminate against any persons who are citizens of the United States and who are qualified and available to perform the work on the Project. The Contractor and any subcontractor, material supplier, or vendor shall not in any manner discriminate against, or intimidate, or prevent the employment of any such person from performing work under this Agreement or any subcontract hereunder on the basis of race, creed, color, sex, or national origin. Any violation of this Paragraph shall be a misdemeanor; and this Agreement may be canceled or terminated by the City, and all money due, or to become due, may be forfeited, for a second or any subsequent violation of the terms or conditions of this Agreement.

- g. **Interest by City Officials.** No elected official, officer, or employee of City shall during his or her tenure or employment and for one year thereafter, have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- h. **Records—Availability and Retention.** Pursuant to Minn. Stat. § 16C.05, subd. 5, the Contractor agrees that the City, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of Contractor and involve transactions relating to this Agreement. The Contractor agrees to maintain these records for a period of six years from the date of termination of this Agreement.

- i. **Force Majeure.** The Parties shall each be excused from performance under this Agreement while and to the extent that either of them are unable to perform, for any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, total or partial failure of transportation or delivery facilities, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either Party is rendered unable wholly or in part by force majeure to carry out its obligations under this Agreement then the Party affected by force majeure shall give written notice with explanation to the other Party immediately.
- j. **Compliance with Laws.** The Contractor shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Agreement or to the facilities, programs and staff for which the Contractor is responsible.
- k. **Governing Law.** This Agreement shall be deemed to have been made and accepted in Rice County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Agreement without regard to its choice of law or conflict of laws principles.
- l. **Data Practices.** The Parties acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 et seq.
- m. **No Waiver.** Any Party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that Party's right to assert or rely upon the terms and conditions of this Agreement.

Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving Party.

- n. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and this Agreement shall be construed and enforced as if the Agreement did not contain that particular provision to the extent of its invalidity or unenforceability.
- o. **Entire Agreement.** These terms and conditions constitute the entire Agreement between the parties regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Agreement.
- p. **Data Disclosure.** Under Minn. Stat. § 270C.65, Subd. 3 and other applicable law, the Contractor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the City, to federal and state agencies and state personnel involved in the payment of City obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Contractor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other City liabilities.
- q. **Payment to Subcontractors.** As required by Minn. Stat. § 471.425, the prime contractor must pay all subcontractors, less any retainage, within 10 calendar days of the prime contractor's receipt of payment from the City for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

- r. **Patented Devices, Materials and Processes.** If this Agreement requires, or the Contractor desires, the use of any design, device, material or process covered by letters, patent or copyright, trademark or trade name, the Contractor shall provide for such use by suitable legal agreement with the patentee or owner and a copy of said agreement shall be filed with the City. If no such agreement is made or filed as noted, the Contractor shall indemnify and hold harmless the City from any and all claims for infringement by reason of the use of any such patented designed, device, material or process, or any trademark or trade name or copyright in connection with the services agreed to be performed under the Agreement, and shall indemnify and defend the City for any costs, liability, expenses and attorney's fees that result from any such infringement.
- s. **Headings and Captions.** Headings and captions contained in this Agreement are for convenience only and are not intended to alter any of the provisions of this Agreement and shall not be used for the interpretation of the validity of the Agreement or any provision hereof.
- t. **Survivability.** All covenants, indemnities, guarantees, releases, representations and warranties by any party or parties, and any undischarged obligations of City and the Contractor arising prior to the expiration of this Agreement (whether by completion or earlier termination), shall survive such expiration.

Remainder of page intentionally left blank.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day
and year first above written.

_____, **CONTRACTOR**

By: _____
(Signature)

Date: _____

Title: _____
Print Name: _____

By: _____
(Signature)

Date: _____

Title: _____
Print Name: _____

CITY OF NORTHFIELD, MINNESOTA

By: _____
Rhonda Pownell, Its Mayor

Date: _____

By: _____
Lynette Peterson, Its City Clerk

Date: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 20____, before me, a Notary Public within and for said County, personally appeared _____ and _____, to me personally known, who, being by me each duly sworn, did say that they are respectively the _____ and the _____ of _____, the corporation named in the foregoing instrument, and that said instrument was signed on behalf of said corporation and said _____ and _____ acknowledged the said instrument to be the duly authorized, free act and deed of said corporation.

Notary Public

EXHIBIT 1

CERTIFICATES OF REQUIRED INSURANCE COVERAGES

[Certificates of Insurance attached hereto]

NOTICE OF AWARD
Owner: City of Northfield, Minnesota

TO: _____

Project Name: _____

Project Description: _____

The Owner has considered the Bid submitted by you for the above-referenced work in response to its Advertisement for Bids dated _____, 20__ , and Instructions to Bidders.

You are hereby notified that your Bid has been accepted for the Project in the amount of \$_____.

You are required by the Instructions to Bidders to execute the enclosed Agreement and furnish the required performance and payment bonds and certificate(s) of insurance within fifteen (15) calendar days from the date you receive this Notice.

If you fail to execute said the enclosed Agreement and to furnish said bonds and certificate(s) within fifteen days from the date of receipt of this Notice, the Owner will be entitled to consider all your rights arising out of the Owner's acceptance of your Bid as abandoned and as a forfeiture of your Bid Security to the Owner.

You are required to return an acknowledged copy of this Notice of Award to the Owner. Dated this ___ day of _____ 20__.

City of Northfield, Minnesota
(owner)

By: _____
Sean M. Simonson

Title: Engineering Manager

ACCEPTANCE OF NOTICE: Receipt of the above Notice of Award is hereby acknowledged.

By _____ this the ___ day of _____, 20__.

By _____

Title: _____

NOTICE TO PROCEED

TO: _____

DATE: _____
PROJECT: _____

You are hereby notified to commence work in accordance with the Agreement dated _____, on or after _____, 20__, and the contractor shall complete all work within _____ working days, beginning on _____, 20__.

You are required to return an acknowledged copy of this Notice of Award to the Owner.
Dated this__ day of____ 20__.

CITY OF NORTHFIELD
(Owner)

By: _____
Sean M. Simonson

Title: Engineering Manager

ACCEPTANCE OF NOTICE: Receipt of the above Notice to Proceed is hereby acknowledged by _____ this the _____ day of _____, 20__.

By: _____

Title: _____

CITY OF NORTHFIELD, MINNESOTA
GENERAL CONDITIONS

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GENERAL CONDITIONS

1. Definitions

- 1.1 Wherever used in the Bidding Requirements or the Contract Documents, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof.
- 1.2 Addendum (Addenda) A written or graphic instrument issued prior to the opening of Bids, which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
- 1.3 Agreement The written contract document which binds the Contractor to perform the Work and the Owner to pay the Contract Price pursuant to the Contract Documents.
- 1.4 Application for Payment The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
- 1.5 Bid The written offer or proposal of the Bidder submitted on the prescribed Bid Form setting forth the prices for the Work to be performed.
- 1.6 Bidder Any individual, firm, corporation or other entity submitting a Bid for the Work to the Owner.
- 1.7 Bidding Documents The Bidding Requirements, the proposed Contract Documents, and all Addenda.
- 1.8 Bidding Requirements The Advertisement for Bids, Instructions to Bidders, Bid Bond or other Bid Security, if any, the Bid Form, and the Bid with any attachments.
- 1.9 Bonds Bid, performance, payment and maintenance bonds and other instruments of security furnished by the Contractor and/or its surety in accordance with the Bidding Requirements and Contract Documents.
- 1.10 Change Order A written order to the Contractor authorizing an addition, deletion or revision in the Work within the general scope of the Contract Documents, or authorizing an adjustment in the Contract Price or Contract Time.
- 1.11 Contract Documents All documents, including the Agreement, identified in the Agreement as Contract Documents.
- 1.12 Contract Price The total monies payable to the Contractor under the terms and conditions of the Contract Documents.
- 1.13 Contract Time(s) The number of Working Days or the dates stated in the Bidding Requirements and Contract Documents for the Substantial and Final Completion of the Work.
- 1.14 Contractor The individual, firm, corporation, or other entity with whom the

Owner has executed the Agreement for the performance of the Work.

- 1.15 Drawings The part of the Contract Documents which graphically show the extent, characteristics and scope of the Work to be performed by the Contractor and which have been prepared or approved by the Engineer.
- 1.16 Engineer The person, firm, corporation or other entity named as such in the Contract Documents.
- 1.17 Field Order Written order effecting 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.
- 1.18 Final Completion The date when the Project, or a designated portion thereof, is officially accepted by the Owner as complete, including the completion of all restoration Work and punchlist Work. This shall trigger the start of the two-year maintenance bond.
- 1.19 Notice of Award The written notice of the acceptance of the Bid issued by the Owner to the successful Bidder.
- 1.20 Notice to Proceed The written notice issued by the Owner to the Contractor authorizing the Contractor to proceed with the Work and establishing the date of commencement of the Work.
- 1.21 Owner The City of Northfield, Minnesota, a municipal corporation under the laws of the State of Minnesota for whom the Work is to be performed.
- 1.22 Project The undertaking to be performed for the Owner by the Contractor as provided in the Contract Documents.
- 1.23 Resident Project Representative The authorized representative of the Owner who is assigned to the Project site or any part thereof.
- 1.24 Shop Drawings All drawings, diagrams, illustrations, brochures, schedules and other data, which are prepared by or for the Contractor, a Subcontractor, manufacturer, Supplier or distributor, which illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
- 1.25 Site Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
- 1.26 Specifications That part of the Contract Documents consisting of written descriptions of a technical nature of and requirements for materials, equipment, construction, systems, standards and Workmanship as applied to the Work and certain administrative requirements and procedural matters applicable to the Work.
- 1.27 Subcontractor An individual, firm, corporation, or other entity having a direct contract with the Contractor or with any other Subcontractor for the performance

of a portion of the Work.

- 1.28 Substantial Completion The date when the Project, or a designated portion thereof, is officially accepted by the Owner for utilization for its intended purpose. Generally, this is after the base course of bituminous is placed.
- 1.29 Successful Bidder The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
- 1.30 Supplementary Conditions Modifications, amendments or supplements to these General Conditions.
- 1.31 Suppliers Any person, entity or organization who provides or furnishes materials or equipment for the Work performed by the Contractor or any Subcontractors, including that fabricated to a special design, but who does not perform labor at the site and has a direct contract with the Contractor or a Subcontractor for such purpose.
- 1.32 Work The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes all labor, services and documentation necessary to produce the construction required by the Contract Documents, and all materials and equipment incorporated or to be incorporated in the Project.
- 1.33 Working Day A calendar day, exclusive of Saturdays, Sundays and legal Holidays, on which weather or other conditions not under the control of the Contractor will permit the normal Working force engaged in progress-controlling operations to proceed for at least two (2) hours.
- 1.34 Written Notice Any written notice to any party to the Agreement relative to any part of the Agreement, which shall be considered delivered and the service thereof completed when posted by certified or registered mail to a party at its last given address, or when delivered in person to a party or an authorized representative assigned to the Project.

2. Additional Instructions and Detail Drawings

- 2.1 The Contractor may be furnished additional instructions and detail drawings by the Engineer as part of addenda, change orders or field orders as necessary to carry out the Work required by the Contract Documents.
- 2.2 The additional drawings and instructions thus supplied as part of addenda, change order, or field orders shall become a part of the Contract Documents. The Contractor shall carry out the Work in accordance with the additional detail drawings and instructions.

3. Drawings and Specifications

- 3.1 The intent of the Drawings and Specifications is that the Contractor shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the Work in accordance with the Contract Documents and all incidental Work necessary to complete the Project in an acceptable manner, ready

for use, occupancy or operation by the Owner.

3.2 In case of conflict between the Drawings and Specifications, the Specifications shall govern. Figure dimensions on Drawings shall govern over scale dimensions, and detailed drawings shall govern over general drawings.

3.3 Any discrepancies or inconsistencies found between the Drawings and Specifications or any omissions or ambiguities in the Drawings or Specifications shall be immediately reported in writing to the Engineer, who shall promptly correct such discrepancies, inconsistencies, omissions or ambiguities in writing. Work done by the Contractor after discovery of such discrepancies, inconsistencies, omissions or ambiguities and prior to correction by Engineer shall be done at the Contractor's risk.

4. Materials, Services and Facilities

4.1 Unless otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the Work within the specified time.

4.2 Materials and equipment shall be so stored as to ensure the preservation of their quality and fitness for the Work. Stored materials and equipment to be incorporated in the Work shall be located so as to facilitate prompt inspection.

4.3 Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.

4.4 Materials, supplies and equipment shall be in accordance with the quality specified and the samples submitted by the Contractor and approved by the Engineer.

4.5 Materials, supplies or equipment to be incorporated into the Work shall not be purchased by the Contractor or the Subcontractor subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

5. Inspection and Testing

5.1 All Work performed in the construction of the project shall be subject to adequate inspection and testing in accordance with generally accepted standards and the Contract Documents. The Contractor agrees to complete the Work in strict conformity with the Contract Documents, regardless of the extent or character of the inspection.

5.2 The Owner shall provide inspection and testing services required by the Contract Documents.

5.3 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 shall give the Engineer timely notice of readiness. The Contractor shall then furnish the Engineer the required certificates of inspection, testing or approval.

- 5.4 Neither observation by the Engineer nor inspections, tests or approvals by persons other than the Contractor shall relieve the Contractor from its obligation to perform the Work in accordance with the requirements of the Contract Documents.
- 5.5 The Engineer and any representatives shall at all times have access to the Work for observation, inspection and testing. In addition, authorized representatives and agents of any participating federal or state agency shall be permitted to inspect all Work, payrolls, records of personnel, invoices of materials, and other relevant data and records. The Contractor shall provide proper facilities for such access.
- 5.6 If any Work is covered contrary to the written request of the Engineer, it must, if requested by the Engineer, be uncovered for the Engineer's observation and replaced at the Contractor's expense.
- 5.7 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, shall 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, materials, tools, and equipment. If it is found that such Work is defective, the Contractor shall bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction. If, however, such Work is not found to be defective, the Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate Change Order shall be issued.

6. Substitutions

- 6.1 Whenever a material, article or piece of equipment is identified on the drawings or specifications by reference to brand name or catalogue number, it shall be understood that this reference is for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The Contractor may recommend the substitution of a material, article, or piece of equipment of equal capacity, quality and function for those referred to in the Contract Documents by reference to brand name or catalogue number, and if, in the opinion of the Engineer, such material, article or piece of equipment is of equal capacity, quality and function to that specified, the Engineer may approve its substitution and use by the Contractor. Any cost differential shall be deducted from the Contract Price and the Contract Documents shall be appropriately modified by Change Order. The Contractor warrants that if substitutes are approved, no major changes in the function or general design of the

Project will result. Incidental changes or extra component parts required to accommodate the substitute shall be made by the Contractor without a change in the Contract Price or Contract Time.

7. Patents

7.1 The Contractor shall pay all applicable royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and save the Owner harmless from loss on account thereof. If the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is given promptly to the Engineer.

8. Surveys and Permits

8.1 The Owner shall furnish all land surveys and establish all base lines for locating the principal component parts of the Work together with surveys needed for construction such as slope stakes, stakes for pile locations and other Working points, lines, elevations and cut sheets.

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

8.3 Permits and licenses of a temporary nature necessary for the prosecution of the Work shall be secured and paid for by the Contractor. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Owner, unless otherwise specified.

9. Site Investigation and Control

9.1 The Contractor shall verify all dimensions in the field and shall check field conditions continuously during construction. The Contractor shall be solely responsible for any inaccuracies built into the work due to his failure to comply with this requirement.

9.2 The Contractor shall inspect related and appurtenant work and shall report in writing to the Engineer any conditions, which will prevent proper completion of the work. Failure to report any such conditions shall constitute acceptance of all site conditions, and any required removal, repair or replacement caused by unsuitable conditions shall be performed by the Contractor at his sole cost and expense.

10. Protection of Work, Property and Persons

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

employees on the Work and other persons who may be affected thereby, all the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, sidewalks/trails, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

- 10.2 The Contractor shall remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except to the extent damage or loss is directly attributable to the fault of the Contract Documents or to the acts or omissions of the Owner or the Engineer or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the Contractor.
- 10.3 In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, the Contractor, without special instruction or authorization from the Engineer or Owner, shall act to prevent threatened damage, injury or loss. The Contractor shall 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.

11. Supervision by Contractor

- 11.1 The Contractor shall supervise and direct the Work. The Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. The Contractor shall employ and maintain on the Work a qualified supervisor or superintendent who shall have been designated in writing by the Contractor as the Contractor's representative at the site. The supervisor shall have full authority to act on behalf of the Contractor and all communications given to the supervisor shall be as binding as if given to the Contractor. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the Work.

12. Changes in the Work

- 12.1 The Owner may at any time, as the need arises, order changes within the scope of the Work without invalidating the Agreement. If such changes increase or decrease the amount due under the Contract Documents, or the time required for performance of the Work, an equitable adjustment shall be authorized by Change Order.
- 12.2 The Engineer, also, may at any time, by issuing a Field Order, make changes in the details of the Work. The Contractor shall proceed with the performance of any changes in the Work so ordered by the Engineer unless the Contractor believes that such Field Order entitles the Contractor to a change in Contract Price

or Contract Time, or both, in which event written notice shall be given to the Engineer within fifteen (15) days after the receipt of the Field Order, and the Contractor shall not execute such changes pending the receipt of an executed change order or further instruction from the Owner.

12.3 If the Contractor claims that any instructions the Engineer or otherwise involve extra cost under the Agreement, the Contractor shall give the Engineer written notice of such claims. The written notice shall be given within a reasonable time after receipt of such instructions, and in any event, before proceeding to execute the affected Work except in an emergency endangering life or property in which case the Contractor shall take whatever precautions are necessary.

12.4 Any change orders or changes from the plans and specifications during the prior week shall be addressed at the weekly construction meeting.

13. Changes in Contract Price

13.1 The Contract Price may be changed only by a Change Order. The value of any Work covered by a Change Order or of any claim for increase or decrease in the Contract Price shall be determined by one or more of the following methods in the order of precedence listed below:

- A. Unit prices previously approved.
- B. An agreed lump sum.
- C. Force account basis pursuant to Mn/DOT Specification 1904.

14. Extra Work and Force Account Work

14.1 The contractor shall submit a schedule of labor and equipment rates on a per hour basis for each operation required during construction of the project. Once approved, based on the Contractor's previous work, these rates may be used for extra work necessary beyond the scope of the bid prices. The Engineer shall approve the extra work. The rates shall be submitted at the pre-construction conference.

15. Notice and Waiver of Claims

15.1 If the Contractor believes that it is entitled to an equitable adjustment or other change to the Contract Price or the Contract Time, the Contractor shall promptly give the Engineer written notice of the claim, the basis of the claim, and the extent to which the Contractor seeks a change in the Contract Price or the Contract Time. Upon request by the Owner or the Engineer, the Contractor shall promptly furnish such documentation supporting the claim as is requested.

15.2 Failure to give prompt written notice or to promptly provide supporting documentation shall constitute a waiver by the Contractor of any claim for or entitlement to an equitable adjustment or other change to the Contract Price or the Contract Time. With respect to the notice, "promptly" shall mean within fifteen (15) calendar days of the event first giving rise to the basis for the claim. With

respect to providing supporting documentation, “promptly” shall mean within fifteen (15) calendar days of the request for supporting documentation.

16. Time for Completion and Delay Damages

- 16.1 The date of beginning and the time for Substantial Completion of the Work is an essential conditions of the Contract Documents and the Work shall be commenced on the date specified in the notice to proceed.
- 16.2 The Contractor shall proceed with the Work at such rate of progress to ensure Substantial Completion within the Contract Time. It is expressly understood and agreed by and between the Contractor and the Owner that the Contract Time for the Substantial Completion of the Work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the Work.
- 16.3 If the Contractor shall fail to Substantially Complete the Work within the Contract Time, or extension of time granted by the Owner, then the Contractor shall pay to the Owner liquidated damages as provided in the Agreement for each calendar day that the Contractor shall be in default of completing the Work within the Contract Time.
- 16.4 The Contractor shall not be charged liquidated damages or any excess cost when the delay in Substantial Completion of the Work is due to the following, and the Contractor has promptly given written notice of such delay to the Owner or Engineer:
- A. To any preference, priority or allocation order duly issued by the Owner; or
 - B. To unforeseeable causes beyond the control and without the direct or indirect fault or negligence of the Contractor or any of its Subcontractors or Suppliers, including but not restricted to acts of God, acts of the Owner, acts of another contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine, strikes, freight embargoes, and abnormal weather.
- 16.5 The Contractor may be eligible for an increase in the Contract Time for unavoidable delays, change orders, disruptions or other interference resulting from the unforeseeable causes beyond the control and without the direct or indirect fault or negligence of the Contractor or any of its Subcontractors or Suppliers, but the Contractor’s only remedy in such event shall be an increase in the Contract Time and the Contractor shall have no right to additional compensation or damages of any kind.

17. Correction of Work

- 17.1 The Contractor shall promptly remove from the premises all Work rejected by the Engineer for failure to comply with the Contract Documents, whether incorporated in the construction or not, and the Contractor shall promptly replace and re-execute the Work in accordance with the Contract Documents and without expense to the Owner and shall bear the expense of making good all Work of

other contractors destroyed or damaged by such removal or replacement.

- 17.2 All removal and replacement Work shall be done at the Contractor's expense. If the Contractor does not take action to remove such rejected Work within ten (10) days after receipt of written notice, the Owner may remove such Work and store the materials at the expense of the Contractor.

18. Subsurface Conditions

- 18.1 The Contractor shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify the Owner by written notice of:
- A. Subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents; or
 - B. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract Documents.
- 18.2 The Owner shall promptly investigate the conditions, and if it finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or in the time required for, performance of the Work, then equitable adjustment shall be made and the Contract Documents shall be modified by a Change Order. Any claim of the Contractor for adjustment hereunder shall not be allowed unless the required written notice has been given, provided that the Owner may, if the Owner determines that the facts so justify, consider and adjust any such claims asserted before the date of final payment.

19. Suspension of Work, Termination and Delay

- 19.1 The Owner may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety (90) days or such further time as agreed upon by the Contractor, by written notice to the Contractor and the Engineer, which notice shall fix the date on which Work shall be resumed. The Contractor shall resume the Work on the date so fixed. The Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributed to any such suspension.
- 19.2 If the Contractor is adjudged as bankrupt or insolvent, or if the Contractor makes a general assignment for the benefit of any creditors, or if a trustee or receiver is appointed for the Contractor or for any of the Contractor's property, or if the Contractor files a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or other applicable laws, or if the Contractor repeatedly fails to supply sufficient skilled Workers or suitable materials or equipment, or if the Contractor repeatedly fails to make prompt payments to Subcontractors or Suppliers for labor, materials or equipment, or if the Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the Work, or if the Contractor disregards the authority of the Engineer, or if the Contractor 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 any surety a minimum of ten (10) days prior 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 the Owner 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 shall pay the difference to the Owner. Such costs incurred by the Owner shall be determined by the Engineer and incorporated in a Change Order.

- 19.3 Where the Contractor's services have been so terminated by the Owner, said termination shall not affect any right of the Owner against the Contractor then existing or which may thereafter accrue. Any retention or payment of monies by the Owner due the Contractor shall not release the Contractor from compliance with the Contract Documents.
- 19.4 After ten (10) days from delivery of a 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 shall be paid for all Work executed and any expense sustained prior to delivery of said notice.
- 19.5 If, through no act or fault of the Contractor, the Work is suspended for a period of more than ninety (90) days by the Owner or under an order of court or other public authority, or the Engineer fails to act on any request for partial payment within thirty (45) days after it is submitted, or the Owner fails to pay the Contractor substantially the sum approved by the Engineer or awarded by arbitrators within sixty (60) days after it is submitted, then the Contractor may, after ten (10) days following delivery of written notice to the Owner and the Engineer, terminate the Agreement and recover from the Owner payment for all Work executed and all expenses sustained prior to said termination. In lieu of terminating the Agreement, if the Engineer has failed to act on a request for partial payment or if the Owner has failed to make any payment as aforesaid, the Contractor may upon ten (10) days notice to the Owner and the Engineer stop the Work until the Contractor has been paid all undisputed amounts then due, in which event and upon resumption of the Work, a Change Order shall be issued adjusting the Contract Price or extending the Contract Time or both to compensate for the costs and delays attributable to the stoppage of the Work.
- 19.6 If the performance of all or any portion of the Work is suspended, delayed, or interrupted as a result of a failure of the Owner or Engineer to act within the time specified in the Contract Documents, or if no time is specified, within a reasonable time, an adjustment in the Contract Price or an extension of the Contract Time, or both, shall be made by Change Order to compensate the Contractor for the costs and delays necessarily caused by the failure of the Owner

or Engineer.

20. Applications for Payment

- 20.1 Based upon Applications for Payment from the Contractor, once a month the Engineer shall submit to the Contractor a partial payment covering the Work performed during the period covered by the partial payment. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at or near the site, the partial payment shall also be accompanied by such supporting data from the Contractor, satisfactory to the Owner, as will establish the Owner's title to the material and equipment and protect the Owner's interest therein, including applicable insurance. The Engineer shall, within thirty (30) days after receipt of each Application for Payment, either indicate in writing approval of payment and present the partial payment to the Owner, or return the Application for Payment to the Contractor indicating in writing any reasons for refusing to approve payment. In the latter case, the Contractor may make the necessary corrections and resubmit the Application for Payment. The Owner shall, within thirty (30) days of presentation of an approved Application for Payment, pay the Contractor a progress payment on the basis of the approved Application for payment. The Owner shall retain five percent (5%) of the amount of each payment until Final Completion of all Work covered by the Contract Documents. At the Owner's sole discretion, upon Final Completion of a portion of the Work on which the price is stated separately in the Contract Documents, payment may be made in full, including retained percentages, less authorized deductions, for that portion of the Work.
- 20.2 All Work covered by partial payment made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor of the sole responsibility for the care and protection of the 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 terms of the Contract Documents.
- 20.3 Upon Final Completion of the Work and the Contractor's submission of the final payment request, the Engineer shall issue a certificate attached to the final payment request that Final Completion of the Work has been achieved. The entire balance found to be due the Contractor, including the retained percentages, except such sums as may be lawfully retained by the Owner, shall be paid to the Contractor within ninety (90) days of the Engineer's certification of Final Completion of the Work.
- 20.4 The Contractor shall defend, indemnify and save the Owner and the Owner's agents harmless from all claims arising out of the lawful demands of Subcontractors, laborers, Suppliers who contributed to the Work. The Contractor shall, at the Owner's request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived.
- 20.5 If the Owner fails to make payments within the required time after approval by the

Engineer, in addition to other remedies available to the Contractor, there shall be added to each such payment interest on the unpaid amount of the request for payment at the rate equal to the monthly index of long-term United States Government bond yields for the month prior to the month in which this obligation is incurred, plus an additional 1 percent per annum. Interest shall not be payable with respect to any amount which the City may legally withhold as a result of breach of contract or other contractual claim or if the delay is caused by the Contractor.

21. Acceptance of Final Payment as Release

21.1 The acceptance by the Contractor of final payment shall constitute full payment for all things done or furnished in connection with the Work and for every act and neglect of the Owner and others relating to or arising out of the Work, and a release of the Owner from all claims and all liability to the Contractor other than claims in stated amounts as may be specifically excepted by the Contractor in writing at the time the Contractor submits the final payment request. Any payment, however, final or otherwise, shall not release the Contractor or the Contractor's sureties from any obligations under the Contract Documents, the performance and payment bonds, or the maintenance bond.

22. Liability Insurance Generally

22.1 The Contractor shall not commence Work under the Agreement until Contractor has obtained all insurance required herein and such insurance has been approved by the City, nor shall Contractor allow any subcontractor to commence Work on a subcontract until such subcontractor has obtained like insurance covering as to worker's compensation, liability, and automobile insurance. All this insurance coverage shall be maintained throughout the life of the Agreement.

22.2 The Contractor shall purchase and maintain such insurance as will protect the Contractor from claims, set forth below, which may arise out of or result from Contractor's execution of the Work, whether such execution be by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- A. Claims under Worker's compensation, disability benefit and other similar employee benefit acts;
- B. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- C. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- D. Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person;
- E. Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom;

- F. Claims for damages because of bodily injury, death, or property damage arising out of ownership, maintenance or use of a motor vehicle;
- G. Claims for bodily injury or property damage arising out of completed operations; and
- H. Claims involving contractual liability insurance applicable to the Contractor's obligations under Article 25 herein.

23. Required Insurance Coverage and Bonds

23.1 The Contractor agrees to procure and maintain, at Contractor's expense, the following insurance policies, including the minimum coverages and limits of liability specified below, or as specified in the applicable insurance certificate(s), or as otherwise required by law, whichever is greater:

Worker's Compensation	Statutory Limits
Employer's Liability	\$500,000 each accident \$500,000 disease policy limit \$500,000 disease each employee
Comprehensive General Liability	\$2,000,000 property damage and bodily injury per occurrence \$4,000,000 annual aggregate \$2,000,000 annual aggregate Products – Completed Operations
Comprehensive Automobile Liability	\$1,000,000 per occurrence combined single limit for Bodily Injury and Property Damage (shall include coverage for all owned, hired and non-owned vehicles)
Umbrella or Excess Liability	\$1,000,000

23.2 Professional/Technical (Errors and Omissions) Liability Insurance, As Applicable. If applicable to the services to be provided by the Contractor should the same involve professional services, the Contractor agrees to procure and maintain, at Contractor's expense, Professional/Technical (Errors and Omissions) Liability Insurance. The required policy will provide coverage for all claims the Contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Contractor's professional services required under this Agreement. The Contractor is required to carry the following minimum limits: \$2,000,000 – per claim or event; \$4,000,000 – annual aggregate; or as specified in the applicable insurance certificate(s), or as otherwise required by law, whichever is greater. Any deductible will be the sole responsibility of the

Contractor and may not exceed \$50,000 without the written approval of the City. If the Contractor desires authority from the City to have a deductible in a higher amount, the Contractor shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that the City can ascertain the ability of the Contractor to cover the deductible from its own resources. The retroactive or prior acts date of such coverage shall not be after the effective date of this Agreement and Contractor shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by Contractor to fulfill this requirement.

- 23.3 The Contractor's policies shall be primary insurance to any other valid and collectible insurance available to the City with respect to any claim arising out of Contractor's performance.
- 23.4 The Contractor is responsible for payment of contract related insurance premiums and deductibles. If Contractor is self-insured, a Certificate of Self-Insurance must be provided to the City.
- 23.5 The Contractor's policies shall include legal defense fees in addition to its liability policy limits, with the exception of the professional liability insurance, if applicable.
- 23.6 All policies listed above shall be written on an "occurrence" form ("claims made" and "modified occurrence" forms are not acceptable) and shall apply on a "per project" basis.
- 23.7 Contractor shall obtain insurance policies from insurance companies having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota
- 23.8 Effect of Failure to Provide Insurance. If the Contractor fails to provide the specified insurance, then Contractor will defend, indemnify and hold harmless the City and City's officials, agents and employees from any loss, claim, liability and expense (including reasonable attorney's fees and expenses of litigation) to the extent necessary to afford the same protection as would have been provided by the specified insurance. Except to the extent prohibited by law, this indemnity applies regardless of any strict liability or negligence attributable to the City (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 the Contractor, its subcontractors, agents, employees or delegates. The Contractor agrees that this indemnity shall be construed and applied in favor of indemnification. The 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 City may require Contractor to:

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

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

- 23.9 Notwithstanding the foregoing, the City reserves the right to immediately terminate the Agreement if the Contractor is not in compliance with the insurance requirements contained herein and retains all rights to pursue any legal remedies against the Contractor.
- 23.10 The Contractor shall procure and maintain, at its own expense, during the contract time, in accordance with the provisions of the laws of the state in which the Work is performed, Worker's compensation insurance, including occupational disease provisions, for all of the Contractor's employees at the site of the Project and in case any Work is sublet, the Contractor shall require each Subcontractor similarly to provide Worker's compensation insurance, including occupational disease provisions, for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous Work under the contract at the site of the Project is not protected under the Worker's compensation act, the Contractor shall provide, and shall cause each Subcontractor to provide, adequate and suitable insurance for the protection of their employees not otherwise protected. The Contractor shall provide the City of Northfield with proof of Worker's compensation insurance covering all the employees of the Contractor and all Subcontractors.
- 23.11 The Contractor shall secure, if applicable, "All Risk" type builder's risk insurance for the Work to be performed. Unless specifically authorized by the Owner, the amount of such insurance shall not be less than the total Contract Price in the Bid. The policy shall cover not less than losses due to fires, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft, smoke and theft during the Contract Time, and until Final Completion is achieved. The policy shall cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Agreement; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures. The policy shall

cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects). The policy shall extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier). The policy shall extend to cover damage or loss to insured property while in transit. The policy shall provide primary coverage for all losses and damages caused by the perils or causes of loss covered.

- 23.12 The policy shall name as the insured the Contractor, the Engineer and the Owner as their interests may appear. This provision shall in no way release the Contractor or Contractor's surety from obligations under the Contract Documents to fully complete the Project.
- 23.13 Certificates of insurance acceptable to the City of Northfield shall be filed with the City of Northfield within ten (10) days after the receipt of the Notice of Award. These certificates shall name the City of Northfield as an additional insured and shall contain a provision that the coverages afforded under the policies will not be canceled unless at least ten (10) days prior written notice has been given to the City of Northfield. A specimen certificate of insurance marked as Exhibit A is attached hereto to assist in your understanding of this requirement. The attached Exhibit A-1 is a statement of additional conditions to the certificate of insurance, which are required without exception. The certificate of insurance, completed as shown in Exhibit A, must be signed by a duly authorized representative of the applicable insurance company or companies. All insurance coverage's required under the Contract Documents shall be maintained in full force and effect at least until Final Completion, and contractual liability and completed operations coverage's shall be maintained for at least three years following Final Completion.
- 23.14 Bonds. The Contractor shall, within ten (10) days after the receipt of the Notice of Award, furnish the City of Northfield with performance and payment bonds, each in penal sum equal to the amount of the Contract Price, conditioned upon the performance by the Contractor of all of the Work required by the Contract Documents, and upon the prompt payment by the Contractor of all persons performing labor on the Project under the Agreement and furnishing materials in connection with the Agreement, and, upon Final Completion of the Project, the Contractor shall furnish a bond for maintenance of the Work done under the Agreement for the specified term stated herein and in penal sum equal to the amount of the Contract Price. Said performance, payment, and maintenance bonds shall be executed by the Contractor and a corporate bonding company licensed to transact such business in the state in which the Work is to be performed. The expense of these bonds shall be borne by the Contractor. If at any time a surety on any such bonds is declared as bankrupt or loses its right to do business in the state in which the Work is to be performed, the Contractor shall immediately so inform the Owner in writing. The Contractor shall within ten (10) days after notice from the Owner to do so, substitute acceptable bonds in such

form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished acceptable bonds to the Owner.

24. Assignments

24.1 The Contractor nor the Owner shall sell, transfer, assign or otherwise dispose of the Agreement or any portion thereof, or of their rights, title or interest therein, or their obligations thereunder, without written consent of the other party.

25. Indemnification

25.1 The Contractor shall defend, indemnify and hold harmless the Owner and the Engineer and their agents and employees from and against all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, and is caused in whole or in part by any negligent or willful act or omission or other fault 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.

25.2 The obligation of the Contractor under this article shall not extend to the liability of the Engineer or the Engineer's agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications.

26. Separate Contracts

26.1 The Owner reserves the right to let other contracts in connection with the Project and to do Work related to the Project by itself. The Contractor shall afford other contractors and the Owner reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their Work, and shall properly connect and coordinate its Work with theirs. If the proper execution or results of any part of the Contractor's Work depends upon the Work of any other contractor, the Contractor shall inspect and promptly report to the Engineer any defects in such Work that render it unsuitable for such proper execution and results.

26.2 If the performance of additional Work by other contractors or the Owner is not noted in the Contract Documents prior to the execution of the contract, written notice thereof shall be given to the Contractor prior to starting any such additional Work. If the Contractor believes that the performance of such additional Work by the Owner or others involves the Contractor in additional expense or entitles the Contractor to an extension of the Contract Time, the Contractor may make a claim therefor as provided in the Contract Documents.

27. Subcontracting

- 27.1 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.
- 27.2 The Contractor shall not award Work to Subcontractors which, in the aggregate, totals in excess of fifty percent (50%) of the Contract Price without prior written approval of the Owner.
- 27.3 The Contractor shall be fully responsible to the Owner for the acts and omissions of the Subcontractors, and of persons either directly or indirectly employed by them, as the Contractor is for the acts and omissions of persons directly employed by the Contractor.
- 27.4 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor and the terms of the Contract Documents insofar as applicable to the Work of Subcontractors and to give the Contractor the same power to terminate any subcontract as the Owner may exercise over the Contractor under any provision of the Contract Documents.
- 27.5 Nothing contained in the Contract Documents shall create any contractual relation between any Subcontractor and the Owner.

28. Engineer's Authority

- 28.1 The Engineer shall act as the Owner's representative during the construction period. The Engineer shall decide questions that may arise as to quality and acceptability of materials furnished and Work performed. Where the General Conditions require the Engineer to act in the role of mediator or neutral, the Engineer shall to the fullest extent practical, interpret the intent of the Contract Documents in a fair and unbiased manner. The Engineer shall make visits to the site and determine if the Work is proceeding in accordance with the Contract Documents.
- 28.2 The Contractor shall be held strictly to the intent of the Contract Documents with regard to Workmanship and execution of the Work. Inspections may be made at the factory or fabrication plant of the source of material supply.
- 28.3 The Engineer shall not be responsible for construction means, controls, techniques, sequences, procedures, or construction safety.
- 28.4 The Engineer shall promptly make decisions relative to interpretation of the Contract Documents.

29. Land and Rights-of-Way

- 29.1 Prior to issuance of the Notice to Proceed, the Owner shall obtain all land and rights-of-way necessary for carrying out and for the completion of the Work to be performed pursuant to the Contract Documents, unless otherwise mutually agreed.

- 29.2 The Owner shall provide to the Contractor information which delineates and describes the lands owned and rights-of-way acquired.
- 29.3 The Contractor shall provide at its own expense and without liability to the Owner any additional land and access thereto that the Contractor may desire for temporary construction facilities or for storage of materials.
30. Cleaning-Up
- 30.1 The Contractor shall remove from all public and private property, at its own expense, all temporary structures, rubbish and waste materials resulting from its operations, before the Work will be considered Finally Complete. All walks, drives, paving, fences, lawns, and streets shall be restored and replaced to their original condition or better except where other provisions are specifically stated.
31. Warranty and Guaranty
- 31.1 The Contractor warrants and guarantees for a period of two (2) years from the date of Final Completion of the Work that the Work shall be free from all defects due to faulty materials or Workmanship and the Contractor shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other property resulting from such defects. The Owner shall give notice of observed defects with reasonable promptness. In the event that the Contractor should fail to make such repairs, adjustments, or other Work that may be made necessary by such defects, the Owner may do so and charge the Contractor the cost thereby incurred. To secure the Contractor's obligations under this paragraph, the Contractor shall provide a maintenance bond which shall remain in full force and effect through the two-year period. In the case of a project which includes both utility and street improvements, the City Council will consider commencement of a separate two-year period for the utility portion of the project upon written request by the Contractor and recommendation of the Engineer after the utility portion has been Finally Completed.
32. Dispute Resolution
- 32.1 Owner and Contractor agree to negotiate all claims, disputes and other matters in question arising out of, or relating to, the Contract Documents or the breach thereof, except for claims which have been waived by the making and acceptance of final payment as provided by Article 20, in good faith for a period of 30 days from the date of notice of dispute prior to proceeding to formal dispute resolution or exercising their rights under law. Any claims or disputes unresolved after good faith negotiations shall first be submitted to mediation utilizing the Minnesota District Court Rule 114 Roster. Owner and Contractor further agree to require an equivalent dispute resolution process governing all contractors, subcontractors, suppliers, consultants, and fabricators concerned with the Project.
- 32.2 At the sole discretion of the Owner, arbitration may be used in lieu of other legal proceedings in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. To the extent the Owner elects to arbitrate, the Contractor consents to the joinder in the arbitration of such other parties as are

desirable for a full determination. The Owner's right to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any court having jurisdiction thereof. Notice of a demand for arbitration shall be filed in writing with the other party to the Contract Documents and with the American Arbitration Association, and a copy shall be filed with the Engineer. Arbitration shall be barred to the extent that a legal action concerning the same claim, dispute or other matter in question would be barred by the applicable statute of limitations.

32.3 The Contractor shall carry on the Work and maintain the progress schedule during any dispute negotiations, mediation or arbitration proceedings, unless otherwise mutually agreed in writing.

32.4 Nothing herein shall be construed to require the Owner to arbitrate any claim, and the Owner reserves the right to avail itself of any remedy available to it at law or in equity.

33. Taxes

33.1 The Contractor shall pay all sales, consumer, use and other similar taxes required by the law of the place where the Work is performed.

34. Storage Area

34.1 The Contractor will be responsible for determining a storage area with the approval of the Engineer. The Contractor shall be responsible for the protective fencing of trees, etc. located on the site and for restoration of any disturbed areas on the storage site. Storage areas shall be fenced. Turf restoration shall be by sodding and shall be incidental to the project.

35. Maintenance of Equipment

35.1 Prior to mobilization to the site, all equipment shall be freshly washed to remove all grease, oil, dirt and organic material from previous projects. All equipment shall be maintained in a clean and operational manner, including all safety features. Equipment with visible leaks or other malfunctions, which pose an environmental, safety or other concern, shall immediately be removed from the site and repaired.

36. Public Safety

36.1 The Contractor shall take the necessary precautions to protect the public and employees from injury by open excavations or other hazardous circumstances by providing temporary fences, barricades, warning signs, flashers, and other safety aids. Such precautions shall be subject to review and approval by the Owner and the Engineer. If at any point during the construction the Engineer or Inspector observes what they determine to be unsafe working conditions, a verbal stop work order will be given until the situation is resolved. If unsafe working conditions continue, a written stop work order will be issued and work will be suspended,

with the working day count continuing. Commencement of work will be allowed when assurances are made to the Engineer that unsafe working conditions will not be repeated. The Contractor shall furnish names, addresses, and phone numbers of at least two (2) local individuals capable of immediate response who will be responsible for the site security and traffic control devices to:

1. The Engineer
2. The Owner
3. Local Law Enforcement Agencies

The Contractor shall respond with sufficient personnel, equipment and/or materials and conduct the required work **or be subject to a \$100 per hour deduction from the time of notification for non-attention to project security and safety.**

NO TRENCH SHALL BE ALLOWED TO BE LEFT OPEN AT NIGHT.

37. Contractor use of Project Site

37.1 The Contractor's use of the project site shall be limited to its construction operations, including on-site storage of materials and field offices. No materials shall be stored in a location as to limit access to the affected public. Any damage caused by Contractor operations to private property, including but not limited to, parking lots, trees, shrubs, material spatter, etc. shall promptly be corrected at the Contractor's expense. The Contractor shall confine its work within the limits of the easements, public rights-of-way, and/or construction limits as shown on the plans. If the Contractor desires additional space, it shall be the Contractor's responsibility to acquire easements and/or permission, as desired.

38. Closing Streets to Traffic

38.1 The Contractor may close streets, or parts of streets, to vehicle traffic upon approval of the City Engineer. The Contractor shall submit an acceptable written traffic control plan before obtaining the approval of the City Engineer. Such streets, or parts of streets, may remain closed for the period stated by the City Engineer, but no longer than required for performance of the Work. Before Work is started on any street, the Contractor shall give notice to the police and fire departments and to local residents.

39. Use of Explosives

39.1 When explosives are used by the Contractor, the Contractor shall use the utmost care and take all necessary precautions not to endanger life or damage or destroy property. All explosives shall be stored in a reasonably secure and safe place which shall be clearly marked, "DANGEROUS – EXPLOSIVES". The method of storing and handling explosives and highly flammable materials shall conform

to all laws and regulations relating thereto. All persons within the danger zone of blasting operations shall be warned and no blasting shall be done until the zone is cleared. If traffic is being maintained over a street or alley under construction, or if blasting operations are in the vicinity of any road, flaggers shall be stationed outside the danger zone to stop traffic until the blasting operations are completed and the road is again safe. The Contractor shall furnish all flaggers and shall pay for all labor and materials required in making repairs to public utility lines, and for removing debris from adjacent property or the right-of-way and tracks of railroads. It is presumed that one flagger will be sufficient to protect railroad property during blasting operations, but should any Contractor carry on its operations in such a way that the railroad property will, in the opinion of the railroad officials, require additional protection, the railroad company may place additional flaggers on the Work at the expense of the Contractor in order to more adequately protect its property. The Contractor shall provide a detailed blasting plan if explosives are to be utilized on this project. The Contractor assumes sole responsibility for any damage caused by the use of explosives to excavate rock. The Contractor is required to document with video and pictures the existing conditions outside and inside of each structure along the blasting corridor to protect against potential claims.

40. Defective Work

- 40.1 Contractor's Obligation: It is Contractor's obligation to assure that the Work is not defective.
- 40.2 Engineer's Authority: Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- 40.3 Notice of Defects: Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- 40.4 Correction, or Removal and Replacement: Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- 40.5 Preservation of Warranties: When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- 40.6 Costs and Damages: In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such

claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due.

40.7 Acceptance of Defective Work. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

40.8 Uncovering Work

- A. Engineer has the authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 - a. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due.
 - b. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within

30 days of the determination that the Work is not defective.

40.9 Owner May Stop the Work.

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

40.10 Owner May Correct Defective Work

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph will be charged against Contractor as set-offs against payments due. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

41. Responsible Contractor Statute Verification of Compliance

41.1 Any prime contractor, subcontractor or motor carrier who is a "responsible contractor" as that term is defined in Minn. Stat. § 16C.285, subd. 3, must meet the requirements of and verify compliance with Minn. Stat. § 16C.285, which statute is incorporated herein by reference.

41.2 Any prime contractor, subcontractor, or motor carrier who fails to verify

compliance with any one of the required minimum criteria established for a “responsible contractor” 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.

- 41.3 Any prime contractor, subcontractor, or motor carrier that makes a false statement under oath verifying compliance with any of the minimum criteria contained in Minn. Stat. § 16C.285, subd. 3, shall be ineligible to be awarded a construction contract on the project for which the verification was submitted.
- 41.4 Any prime contractor, subcontractor, or motor carrier that makes a false statement under oath verifying compliance with any of the minimum criteria contained in Minn. Stat. § 16C.285, subd. 3, may result in termination by the contracting authority of a construction contract that has already been awarded to a prime contractor, subcontractor or motor carrier.
- 41.5 A contractor responding to a solicitation document of a contracting authority shall submit to the contracting authority a signed statement under oath by an owner or officer verifying compliance with each of the minimum criteria contained in Minn. Stat. § 16C.285, subd. 3 (except clause (7) discussed below) of said statute, at the time that it responds to the solicitation document.
- 41.6 A verification of compliance need not be notarized. An electronic verification of compliance made and submitted as part of an electronic bid shall be an acceptable verification of compliance under Minn. Stat. § 16C.285 provided that it contains an electronic signature as defined in Minn. Stat § 325L.02, paragraph (h).
- 41.7 A prime contractor, subcontractor, or motor carrier shall include in its verification of compliance under Minn. Stat. § 16C.285, subd. 4, a list of all of its first-tier subcontractors that it intends to retain for work on the project.
- 41.8 If a contract is awarded to the prime contractor by the contracting authority, prior to execution of a construction contract, and as a condition precedent to the execution of a construction contract, the prime contractor shall submit to the contracting authority a supplemental verification under oath confirming compliance with Minn. Stat. § 16C.285, subd. 3, clause (7). Each contractor or subcontractor shall obtain from all subcontractors with which it will have a direct contractual relationship a signed statement under oath by an owner or officer verifying that they meet all of the minimum criteria in Minn. Stat. § 16C.285, subd. 3, prior to execution of a construction contract with each subcontractor.
- 41.9 A prime contractor shall submit to the contracting authority, upon request, copies of the signed verifications of compliance from all subcontractors.

EXHIBIT A – 1

1. The City of Northfield and The Engineer (CONSULTANT) must be listed as both the certificate holder and additional insureds.
2. The City requires that an endorsement be processed that gives 10 days notice of cancellation.
3. The limits of general liability insurance must be at least \$2,000,000/occurrence; \$4,000,000/aggregate.
4. Workman's compensation limits must be on the certificate.