

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. Schedules, Reports and Records
 - 3.1 The Contractor shall submit to the Owner such schedules of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data as the Owner may request concerning Work performed or to be performed.
 - 3.2 Prior to or at the time of the pre-construction conference, the Contractor shall submit schedules showing the order in which it proposes to carry out the Work,

including dates at which it will start the various portions of the Work and the estimated date of Substantial Completion of each portion.

4. Drawings and Specifications

- 4.1 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.
- 4.2 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.
- 4.3 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.

5. Shop Drawings

- 5.1 The Contractor shall provide Shop Drawings as may be necessary for the prosecution of the Work as required by the Contract Documents. The Engineer shall promptly review all Shop Drawings. The Engineer's approval of any Shop Drawings shall not release the Contractor from responsibility for deviations from the Contract Documents. The approval of any Shop Drawing that substantially deviates from the requirements of the Contract Documents shall be evidenced by a Change Order.
- 5.2 When submitted for the Engineer's review, Shop Drawings shall bear the Contractor's certification that the Contractor has reviewed and approved the Shop Drawings and that they are in conformance with the requirements of the Contract Documents. A minimum of two sets of Shop Drawings are required by the Engineer. One set shall be returned to the Contractor upon review and acceptance by the Engineer. Whenever a specific brand and model is specified, an "or equal" item shall be considered by the Engineer if submitted by the Contractor.
- 5.3 Portions of the Work requiring a Shop Drawing or sample submission shall not begin until the Shop Drawing or submission has been approved by the Engineer. A copy of each approved Shop Drawing and each approved sample shall be kept in good order by the Contractor at the site and shall be available to the Engineer.

6. Materials, Services and Facilities

- 6.1 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.

- 6.2 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.
- 6.3 Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.
- 6.4 Materials, supplies and equipment shall be in accordance with the quality specified and the samples submitted by the Contractor and approved by the Engineer.
- 6.5 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.

7. Inspection and Testing

- 7.1 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.
- 7.2 The Owner shall provide inspection and testing services required by the Contract Documents.
- 7.3 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.
- 7.4 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.
- 7.5 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.
- 7.6 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.

7.7 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.

8. Substitutions

8.1 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.

9. Patents

9.1 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.

10. Surveys and Permits

10.1 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.

- 10.2 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.
- 10.3 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.
11. Protection of Work, Property and Persons
- 11.1 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.
- 11.2 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.
- 11.3 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.
12. Supervision by Contractor
- 12.1 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.

13. Changes in the Work

- 13.1 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.
- 13.2 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.
- 13.3 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.

14. Changes in Contract Price

- 14.1 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.

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.

22.3

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:

- i. Furnish and pay for a surety bond, satisfactory to the City, guaranteeing performance of the indemnity obligation; or
- ii. 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. Existing Utilities

34.1 The location of existing utilities indicated on the Drawings is based solely on available records and no responsibility is assumed by the Owner or the Engineer for the accuracy of the location of the utilities indicated on the Drawings. The Contractor shall assume all responsibility to the utility companies for expense incurred by them to protect or maintain their operation, including temporary relocations, during the time Work is in progress, and for damage caused to such utilities by the Contractor's operations.

35. Closing Streets to Traffic

35.1 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.

36. Use of Explosives

36.1 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.

37. Defective Work

- 37.1 Contractor's Obligation: It is Contractor's obligation to assure that the Work is not defective.
- 37.2 Engineer's Authority: Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- 37.3 Notice of Defects: Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- 37.4 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.
- 37.5 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.
- 37.6 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.
- 37.7 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.

37.8 Uncovering Work

37.8.1. Engineer has the authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

37.8.2. 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.

37.8.3. 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.

37.8.3.1. 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.

37.8.3.2. 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.

37.9 Owner May Stop the Work. 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.

37.10 Owner May Correct Defective Work

37.10.1. 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.

37.10.2. 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.

37.10.3. 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.

38. Responsible Contractor Statute Verification of Compliance

- 38.1 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.
- 38.2 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.
- 38.3 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.
- 38.4 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.
- 38.5 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.
- 38.6 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).
- 38.7 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.

- 38.8 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.
- 38.9 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 (Name) 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.