

GENERAL CONDITIONS
TO THE
STANDARD SPECIFICATIONS
FOR
CONSTRUCTION

CITY OF EDEN PRAIRIE, MINNESOTA

SECTIONS

SECTION 1 - DEFINITIONS

SECTION 2 - PLANS, SPECIFICATIONS AND RELATED DATA

SECTION 3 - ENGINEER-OWNER-CONTRACTOR RELATIONS

SECTION 4 - SCOPE OF WORK

SECTION 5 - MATERIALS AND WORKMANSHIP

SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

SECTION 7 - MEASUREMENT AND PAYMENT

TABLE OF CONTENTS

| <u>TITLE</u> | <u>PAGE</u> |
|---|--------------------|
| <u>SECTION I - DEFINITIONS</u> | |
| GC 1-01 General | 1 |
| GC 1-02 Contract | 1 |
| GC 1-03 City or Municipality | 1 |
| GC 1-04 Engineer | 1 |
| GC 1-05 Consultant or Special Engineer | 1 |
| GC 1-06 Work or Project | 1 |
| GC 1-07 Specifications | 1 |
| GC 1-08 Special Conditions | 1 |
| GC 1-09 Supplemental Specifications | 2 |
| GC 1-10 Plans | 2 |
| GC 1-11 Bidder | 2 |
| GC 1-12 Proposal | 2 |
| GC 1-13 Proposal Guaranty | 2 |
| GC 1-14 Contractor | 2 |
| GC 1-15 Subcontractor | 2 |
| GC 1-16 Contract Bond | 2 |
| GC 1-17 Surety | 2 |
| GC 1-18 Written Notice | 2 |
| GC 1-19 Governmental Agency | 2 |
| GC 1-20 Act of God | 3 |
| GC 1-21 Days | 3 |
| GC 1-22 Working Days | 3 |
| GC 1-23 Time of Completion | 3 |
| GC 1-24 Inspector | 3 |

TABLE OF CONTENTS

| <u>TITLE</u> | <u>PAGE</u> |
|--|--------------------|
| GC 1-25 Laboratory | 3 |
| <u>SECTION 2 - PLANS, SPECIFICATIONS AND RELATED DATA</u> | |
| GC 2-01 Intent of Plans and Specifications | 3 |
| GC 2-02 Conflict | 3 |
| GC 2-03 Discrepancies in Plans | 4 |
| GC 2-04 Adequacy of Plans and Specifications | 4 |
| GC 2-05 Plans and Specifications at Job Site | 4 |
| GC 2-06 Shop Drawings | 4 |
| GC 2-07 Examination of Plans and Specifications | 4 |
| GC 2-08 Dimensions | 5 |
| GC 2-09 Models | 5 |
| GC 2-10 Private Projects | 5 |
| <u>SECTION 3 - ENGINEER-OWNER-CONTRACTOR RELATIONS</u> | |
| GC 3-01 Engineer's Responsibility and Authority | 5 |
| GC 3-02 Suspension of Work by Engineer | 6 |
| GC 3-03 Suspension of Work by City | 6 |
| GC 3-04 Suspension of Work by Contractor | 6 |
| GC 3-05 Arbitration | 6 |
| GC 3-06 Conflicts | 7 |
| GC 3-07 Limitation of Remedies | 7 |
| GC 3-08 Examination of Completed Work | 7 |
| GC 3-09 Contractor's Superintendents | 7 |
| GC 3-10 Contractor's Employees | 7 |
| GC 3-11 Inspectors | 8 |
| GC 3-12 Lands by City | 8 |

TABLE OF CONTENTS

| <u>TITLE</u> | <u>PAGE</u> |
|---|--|
| GC 3-13 | Lands by Contractor 8 |
| GC 3-14 | Private Property 8 |
| GC 3-15 | Removal of Construction Equipment, Tools, and Supplies 8 |
| GC 3-16 | City's Right to Correct Deficiencies 8 |
| GC 3-17 | City's Right to Terminate Contract and Complete the Work 8 |
| GC 3-18 | Contractor's Right to Terminate Contract 9 |
| GC 3-19 | Injunctions 10 |
| GC 3-20 | Rights of Various Interests 10 |
| GC 3-21 | Separate Contracts 10 |
| GC 3-22 | Subcontracts 10 |
| GC 3-23 | Work During an Emergency 11 |
| GC 3-24 | Oral Agreements 11 |
| GC 3-25 | Construction Schedule 11 |
| GC 3-26 | Delays and Extension of Contract Time 11 |
| <u>SECTION 4 - SCOPE OF WORK</u> | |
| GC 4-01 | Estimate of Quantities 12 |
| GC 4-02 | Additional Instructions 12 |
| GC 4-03 | Changes or Alterations in the Work 12 |
| GC 4-04 | Interpretations and Change Orders 13 |
| GC 4-05 | Salvage 13 |
| GC 4-06 | Cleanup 13 |
| GC 4-07 | Taxes 13 |
| GC 4-08 | Permits 13 |
| <u>SECTION 5 - MATERIALS AND WORKMANSHIP</u> | |
| GC 5-01 | Quality of Equipment and Materials 14 |

TABLE OF CONTENTS

| <u>TITLE</u> | <u>PAGE</u> |
|--|---|
| GC 5-02 | Materials Furnished by the City 14 |
| GC 5-03 | Materials Furnished by the Contractor 15 |
| GC 5-04 | Storage of Materials 15 |
| GC 5-05 | Rejected Work and Materials 15 |
| GC 5-06 | Manufacturer's Directions 15 |
| GC 5-07 | Cutting and Patching 16 |
| GC 5-08 | Patents 16 |
| GC 5-09 | Contract Bond 16 |
| GC 5-10 | Guaranty 16 |
| GC 5-11 | Overweight Policy 16 |
| <u>SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC</u> | |
| GC 6-01 | Contractor's Responsibilities 16 |
| GC 6-02 | Responsible Contractor 17 |
| GC 6-03 | Data Practices Act 18 |
| GC 6-04 | Discrimination 18 |
| GC 6-05 | Use of Premises 18 |
| GC 6-06 | Privileges of Contractor in Streets, Right-of-Way and Easement 18 |
| GC 6-07 | Safety 18 |
| GC 6-08 | Failure to Pay for Labor and Materials 19 |
| GC 6-09 | Moving of Public and Private Utilities 19 |
| GC 6-10 | Protection of Public and Private Utilities 19 |
| GC 6-11 | Damage to Existing Improvements and Utilities 20 |
| GC 6-12A | Maintenance of Traffic 21 |
| GC 6-12B | Street Closures or Partial Closures 21 |
| GC 6-12C | Existing Traffic Signs and Facilities 21 |

TABLE OF CONTENTS

| <u>TITLE</u> | <u>PAGE</u> |
|--|--------------------|
| GC 6-12D Detours | 21 |
| GC 6-12E Local and Emergency Traffic | 22 |
| GC 6-12F Protection of Pedestrian and Vehicular Traffic | 22 |
| GC 6-12G Restriction of Parking | 22 |
| GC 6-12H Flagmen | 22 |
| GC 6-13 Traffic Control within and Abutting the Project | 22 |
| GC 6-14 Use of Explosives | 22 |
| GC 6-15 Railroad Crossings | 22 |
| GC 6-16 Sanitary Provisions | 23 |
| GC 6-17 Water | 23 |
| GC 6-18 Noise Elimination | 23 |
| GC 6-19 Fossils | 23 |
| GC 6-20 Right to Use Improvement | 23 |
| GC 6-21 Monuments and Stakes | 23 |
| GC 6-22 Discrimination on Account of Race, Creed or Color | 23 |
| GC 6-23 Insurance | 24 |
| GC 6-24 Working Hours | 26 |
| GC 6-25 Trees | 26 |

SECTION 7 - MEASUREMENT AND PAYMENT

| | |
|---|----|
| GC 7-01 Measurement | 26 |
| GC 7-02 Claims | 26 |
| GC 7-03 Scope of Payment | 26 |
| GC 7-04 Payment for Extra Work | 27 |
| GC 7-05 Progress Payments, Retained Percentage | 28 |
| GC 7-06 Engineer's Action on a Request for Payment | 29 |

TABLE OF CONTENTS

| <u>TITLE</u> | <u>PAGE</u> |
|---|--------------------|
| GC 7-07 City's Action on an Approved Request for Payment | 29 |
| GC 7-08 Payment for Uncorrected Work | 29 |
| GC 7-09 Payment for Rejected Work and Materials | 29 |
| GC 7-10 Payment for Work Suspended by the City | 30 |
| GC 7-11 Payment for Work by the City | 30 |
| GC 7-12 Payment for Work Following City's Termination of the Contract | 30 |
| GC 7-13 Payment for Work Terminated by the Contractor | 30 |
| GC 7-14 Release of Liens | 30 |
| GC 7-15 Income Tax Withholding | 30 |
| GC 7-16 Audit | 30 |
| GC 7-17 Acceptance and Final Payment | 30 |
| GC 7-18 Termination of Contractor's Responsibility | 31 |
| GC 7-19 Correction of Faulty Work after Final Payment | 31 |
| GC 7-20 Limitations | 31 |

GENERAL CONDITIONS

CITY OF EDEN PRAIRIE, MINNESOTA

SECTION 1 - DEFINITIONS

- 1-01 GENERAL: For the purposes of the Contract Documents and any documents or instruments dealing with the construction operations governed by these Documents, the terms defined in this section have the meanings given them.
- 1-02 CONTRACT: The term means the Contract Documents. The Contract Documents consist of the following:
1. Legal and Procedural Documents
 - a. Notice to Contractors - Advertisement for Bids
 - b. Instructions to Bidders
 - c. Accepted Proposal Form
 - d. Proposal Guaranty
 - e. Contract Agreement
 - f. Contractor's Performance and Payment Bond
 2. Special Conditions
 3. Detail Specifications
 4. General Conditions
 5. Plans
 6. Addenda and Supplemental Agreements
- 1-03 CITY or MUNICIPALITY: The term means the City of Eden Prairie, County of Hennepin, State of Minnesota, acting by its City Council or duly authorized officers (the Owner).
- 1-04 ENGINEER: The City Engineer for the City of Eden Prairie or his designated representative.
- 1-05 CONSULTANT or SPECIAL ENGINEER: As defined in Special Conditions.
- 1-06 WORK or PROJECT: As defined in Special Conditions.
- 1-07 SPECIFICATIONS: The term means the directions, provisions, and requirements contained herein, together with all written agreements made or to be made pertaining to the method and manner of performing the work, or to the quantities and qualities of materials to be furnished under the Contract.
- 1-08 SPECIAL CONDITIONS: The term means contract requirements peculiar to the project which are not otherwise thoroughly or satisfactorily detailed and set forth in the Specifications.

1-09 SUPPLEMENTAL SPECIFICATIONS: The edition of the Minnesota Department of Transportation Standard Specifications for Construction at time of letting and the City of Eden Prairie Standard Detail Specifications for the Construction of Sanitary Sewer, Storm Sewer, and Watermain Systems, shall apply, together with all requirements of the Minnesota Department of Health and Industrial Commission, except as altered or modified by the Special Conditions. Where there is a discrepancy between the Specifications of the City of Eden Prairie and those of Minnesota Department of Transportation, the General Conditions of the City of Eden Prairie shall apply.

The Contractor herein agrees to comply with the Minnesota Occupational Safety and Health Act of 1973 for the performance of the work.

The Contractor shall comply with Minnesota Statutes Section 363 concerning the rules and regulations of the Minnesota Department of Human Rights.

1-10 PLANS: The term means the official drawings, plans, profiles, typical cross sections and supplemental drawings, or reproductions thereof, approved by the Engineer, which show the location, character, dimensions and details of work to be performed. All such drawings, as listed elsewhere in the Contract Documents, are a part of the Plans whether attached to the Specifications or separate therefrom.

1-11 BIDDER: The term means an individual, firm, co-partnership or corporation, or combination thereof, submitting a Proposal for the work contemplated and acting directly or through a duly authorized representative.

1-12 PROPOSAL: The term means the written offer or copy thereof of a Bidder to perform the work described by the Contract Documents when made out and submitted on the prescribed Proposal Form, properly signed and guaranteed.

1-13 PROPOSAL GUARANTY: The term means the security designated in the Proposal to be furnished by the Bidder as a guaranty of good faith to enter into a contract with the City of Eden Prairie if the work is awarded to him.

1-14 CONTRACTOR: The term means the Contractor named in the Contract Documents.

1-15 SUBCONTRACTOR: The term means those having a direct contract with the Contractor and it includes one who furnishes material worked to a special design according to the plans and specifications of this work, but does not include one who merely furnishes material so worked.

1-16 CONTRACT BOND: The term means the Contractor's Performance and Payment Bonds required by the Contract Documents.

1-17 SURETY: The term means the person, firm or corporation who executes the contract bond.

1-18 WRITTEN NOTICE: The term means notice in writing delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered mail to the last business address known to whoever gives the notice.

1-19 GOVERNMENTAL AGENCY: A governmental unit other than the City having jurisdiction in the premises.

- 1-20 ACT of GOD: The term means an earthquake, flood, cyclone or other cataclysmic phenomenon of nature. Rain, wind, flood or any other natural phenomenon of normal intensity for the locality shall not be construed as an Act of God.
- 1-21 DAYS: The term means, unless otherwise provided, calendar days.
- 1-22 WORKING DAYS: Any day, excluding Saturday, Sunday or State recognized legal holidays, when weather conditions or the results of weather conditions will allow the Contractor to pursue, for two hours between 8:00 a.m. and 4:30 p.m. with the normal working force, any item or items of work which would be in progress at that time.
- 1-23 TIME of COMPLETION: The term means that date set in the Contract Documents for completion of the work; or number of working or calendar days after notice to proceed set out in the Contract Documents. (See also Paragraph 3-25).
- 1-24 INSPECTOR: The term means an authorized representative of the Engineer, assigned to make any or all necessary inspections of the work performed and the materials furnished by the Contractor.
- 1-25 LABORATORY: The term means the testing laboratory designated by the Engineer to inspect and determine the suitability of materials.

SECTION 2 - PLANS, SPECIFICATIONS AND RELATED DATA

- 2-01 INTENT of PLANS and SPECIFICATIONS: The intent of the Plans and Specifications is that the Contractor furnish all labor and materials, equipment and transportation necessary for the proper execution of the work unless specifically noted otherwise. The Contractor shall do all the work shown on the Plans and described in the Specifications and all incidental work necessary to complete the project in an acceptable manner and to fully complete the work or improvement, ready for use, occupancy and operation of the City.

It is further the intention of the Plans and Specifications to set forth requirements of performance, type of equipment and structures, and standards of materials and construction, to require new material and equipment unless otherwise indicated and to require complete performance of the work without specific reference to any minor component part. It is not intended, however, that material or work not covered by or properly inferable from any heading, branch, class or trade of the Specifications shall be supplied unless distinctly so noted. Materials of work described in words, which so applied have a well-known technical or trade meaning, shall be held to refer to such recognized standards.

All work shall be completed in accordance with the Specifications and Plans, and in compliance with applicable laws of the U.S. Government, State of Minnesota, and the ordinances of the City of Eden Prairie.

- 2-02 CONFLICT: In the case of a conflict of meaning between any of the terms of the Contract Documents, the provisions of the document listed first below control over those of the document listed later:
1. Plans, Proposal, Proposal Form
 2. Special Conditions
 3. Detail Specifications
 4. General Conditions

5. Contract Agreement Form

Special Conditions and Detail Specifications are intended to modify and prevail over Standard Plans and Specifications.

- 2-03 DISCREPANCIES in PLANS: The drawings, specifications, and other parts of the Plans are intended to complement one another. Anything shown on the drawings but not mentioned in the Specifications, or vice versa, or anything not expressly set forth in either but which is reasonably implied, shall be furnished as though specifically shown and mentioned in both, without extra charge. Should anything be omitted from the drawings necessary to the proper construction of the work herein described, it shall be the duty of the Contractor to so notify the Engineer before signing the Contract; and in the event of the Contractor failing to give such notice, he shall make good any damage or defect in his work caused thereby, without extra charge.

Questions as to meaning of Plans and Specifications shall be interpreted by the Engineer, whose decision shall be final and binding on all parties concerned. (See also GC 3-01). The Engineer will provide the Contractor with such information as may be required to show revised or additional details of construction. The Engineer will provide full information when errors or omissions in the Plans and Specifications are discovered. Any work done by the Contractor, after his discovery of such discrepancies, errors or omissions and prior to a decision by the Engineer, shall be done at the Contractor's risk.

- 2-04 ADEQUACY of PLANS and SPECIFICATIONS: Responsibility for adequacy of the design and for sufficiency of the Plans and Specifications shall be borne by the City, except for any work done by the Contractor after discovery of discrepancies, errors, or omissions which shall be the responsibility of the Contractor (See GC 2-03). The complete requirements of the work to be performed under the Contract shall be set forth in Plans and Specifications to be supplied by the City through the Engineer or by the Engineer as representative of the City.

- 2-05 PLANS and SPECIFICATIONS at JOB SITE: One complete set of all Plans and Specifications shall be maintained by the Contractor at the job site and shall be available to the Engineer at all times.

Additional detail and working drawings will be furnished in amplification of the Contract Drawings as provided in the Special Conditions. All such additional drawings are to be considered of equal force with those which accompany the Specifications. The City retains ownership of all Plans, Specifications and Drawings, and they shall be returned to the City upon completion of the work.

- 2-06 SHOP DRAWINGS: The Contractor shall, upon request, submit shop drawings in quadruplicate for the approval of the Engineer.

- 2-07 EXAMINATION of PLANS and SPECIFICATIONS: Before submitting a bid, all Contractors must carefully examine the Plans and Specifications, and are solely responsible for evaluating the likelihood and the extent of any difficulties which may arise on the site of the work.

After the time set for opening of the bids, no bidder may, without the consent of the City, withdraw his proposal or claim extra compensation or damages for any error or omission made by said bidder in preparing his proposal.

In the event of discrepancies between the prices quoted in the proposal, in unit prices and the extensions thereof, the unit prices shall control. The prices are to include the furnishing of all

materials, plant, equipment, tools, and all other facilities and the performing of all labor and services necessary or proper for the completion of the work, except such as may be otherwise expressly provided in the Contract Documents.

- 2-08 **DIMENSIONS:** Figured dimensions on the Plans will be used in preference to scaling the drawings. Where the work of the Contractor is affected by finish dimensions or manufacturer's equipment, these shall be determined by the Contractor at the site, and he shall assume the responsibility therefore.
- 2-09 **MODELS:** All models prepared for this work, in accordance with requirements of Plans and Specifications, shall become the property of the City at the completion of the work.
- 2-10 **PRIVATE PROJECTS:** These Specifications are written with the City of Eden Prairie as a party to the Contract. For private projects where the City of Eden Prairie is not a party to the Contract, these Specifications are available for private use. Although in this case, there must be a reference in the Special Conditions as to the Owner, Engineer and City relationships.

SECTION 3 - ENGINEER-OWNER-CONTRACTOR RELATIONS

- 3-01 **ENGINEER'S RESPONSIBILITY and AUTHORITY:** The Engineer is responsible for the general supervision and direction of the work and whenever, in the exercise of his best judgment, it is necessary to do so to ensure the safety of all those working on the project and all members of the public. The Engineer may stop the work whenever such stoppage is necessary to insure the proper execution of the Contract. The Engineer may reject work and materials which do not conform to the Contract, as determined by special inspections and tests as he may require, to direct the application of forces to any portion of the work as in his judgment is required, to order the force increased or diminished and to decide questions which arise in the execution of the work.

The Engineer is not responsible for the acts or omissions of the Contractor's superintendent or other employees.

The Engineer shall, within a reasonable time after their presentation to him, make decisions in writing on all claims of the City or the Contractor and on all other matters relating to the execution and progress of the work or the interpretation of the Contract Documents.

All such decisions of the Engineer shall be final, except where time or financial considerations are involved, in which case the decision is subject to Arbitration under GC 3-05.

Failure to condemn any inferior material or work at the time of its use or construction shall not be construed as an acceptance of the same, but the Contractor shall, upon notice from the Engineer at any time prior to the final acceptance of the improvement, immediately tear out, remove and properly reconstruct, at his own cost, any portion of this improvement which the Engineer may decide to be defective and the Contractor will be held wholly responsible for the safety, proper construction and perfection of the entire improvement until the same has been finally accepted and paid for by the City of Eden Prairie.

The Engineer will make final inspection of all work included in the Contract or any portion thereof, as soon as practical after notification by the Contractor that such work is nearing completion. If such work is not acceptable to the Engineer at the time of his inspection, he will advise the Contractor in writing as to the particular defects to be remedied before such work can be accepted. If, within a period of ten (10) days after such notification, the Contractor has not taken steps to

speedily complete the work as directed, the Engineer may, without further notice and without in any way impairing the Contract, make such other arrangements as he may deem necessary to have such work completed in a satisfactory manner. The cost of completing such work shall be deducted from any monies due, or which may become due, to the Contractor on his Contract.

- 3-02 SUSPENSION of WORK by ENGINEER: When, in the judgment of the Engineer, unfavorable weather or any other condition makes it impractical to perform work in accordance with the Contract, or should the Contractor fail to carry out the provisions of the Contract or supply materials meeting the requirements of the Specifications, the Engineer may issue to the Contractor a written order to suspend work on all or any part of the Contract work. When conditions are again favorable for prosecution of the work, the Engineer will issue to the Contractor a written order to resume the suspended work. Orders to suspend work will not be written for intermittent shutdowns due to weather conditions unless the suspension of work is to be for an extended period of time. The Contractor shall take every precaution to prevent any damage or unreasonable deterioration of the work during the time it is closed down.

Suspension of the work by the Engineer is not grounds for claims by the Contractor for damages or extra compensation.

- 3-03 SUSPENSION of WORK by CITY: The City may at any time suspend the work, or any part thereof, by giving ten (10) days' notice to the Contractor in writing. The work shall be resumed by the Contractor within ten (10) days after the date fixed in the written notice from the City to the Contractor to do so.

If the work, or any part thereof, shall be stopped by notice in writing aforesaid, and if the City does not give notice in writing to the Contractor to resume work at a date within a year of the date fixed in the written notice to suspend, then the Contractor may abandon that portion of the work so suspended, and he will be entitled to the estimates and payments for all work done on the portions so abandoned, if any (See also GC 7-10). This paragraph shall not be construed as entitling the Contractor to compensation for suspension due to failure to furnish adequate surety as specified herein, or for suspension made at the request of or due to the fault of the Contractor.

If suspension of all or part of the work causes additional expenses not due to the fault or negligence of the Contractor, the City shall reimburse the Contractor for the additional expense incurred due to suspension of the work. Claims for such compensation, with complete substantiating records, shall be filed with the Engineer within ten (10) days after the date of order to resume work in order to receive consideration. This paragraph shall not be construed as entitling the Contractor to compensation for delays due to inclement weather, failure to furnish additional surety or sureties specified herein, for suspension made at the request of the Contractor, or for any other delay provided for in the Contract Documents.

- 3-04 SUSPENSION of WORK by CONTRACTOR: The Contractor may suspend work upon ten (10) days written notice to the City and the Engineer, for any of the grounds for termination set forth in GC 3-18.

- 3-05 ARBITRATION: Should there be a dispute about any matter involving the decision of the Engineer which is subject to arbitration, the dispute may be submitted to arbitration by either party to the Contract, provided the City consents to arbitration. (See GC 3-01). The Contractor shall not delay the work because arbitration proceedings are pending unless he shall have written permission from the Engineer to do so and such delay shall not extend beyond the time when the arbitrator or arbitrators shall have the opportunity to determine whether the work shall continue or be suspended

pending decision by the arbitrator or arbitrators of such a dispute. Any demand for arbitration shall be in writing and shall be delivered to the Engineer and any adverse party by either personal delivery or by registered mail addressed to the last known address of each within ten (10) days of receipt of the Engineer's decision, and in no event after final payment has been made and accepted, subject, however, to any express stipulation to the contrary in the Contract Documents. Should the Engineer fail within a reasonable period to make a decision, a demand for arbitration may then be made as if the Engineer's decision had been rendered against the party demanding arbitration.

No one shall be qualified to act as an arbitrator who has, directly or indirectly, any financial interest in the Contract or who has any business or family relationship with the City, the Contractor, or the Engineer. Each arbitrator selected shall be qualified by experience and knowledge of the work involved in the matter to be submitted to arbitration.

Arbitration shall be conducted in accordance with the Uniform Arbitration Act, Minnesota Statutes, Chapter 572, and the Construction Industry Arbitration Rules of the American Arbitration Association.

- 3-06 CONFLICTS: No salaried officer or employee of the City and no member of the Board of the City shall have a financial interest, direct or indirect in this Contract. The violation of this provision renders the Contract void. Any federal regulations and applicable State Statutes shall not be violated.
- 3-07 LIMITATIONS of REMEDIES: In the event of a breach of the Contract by the City, the Contractor shall not be entitled to recover punitive, special or consequential damages or damages for loss of business.
- 3-08 EXAMINATION of COMPLETED WORK: If the Engineer requests it, the Contractor at any time before acceptance of the work shall remove or uncover such portions of the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standard required by the Specifications. Should the work thus exposed or examined prove acceptable, the uncovering or removing, and the replacing of the covering or making good of the parts removed shall be paid for as Extra Work, in accordance with requirements of GC 7-04; but should the work so exposed or examined prove unacceptable, the uncovering, removing and replacing shall be at the Contractor's expense.
- 3-09 CONTRACTOR'S SUPERINTENDENTS: A qualified superintendent, who is acceptable to the Engineer, shall be maintained on the work and given efficient supervision to the work until its completion. The superintendent shall have full authority to act in behalf of the Contractor, and all directions given to the superintendent shall be considered given to the Contractor. The Engineer's instructions may be confirmed in writing and shall be so confirmed upon written request of the Contractor.
- 3-10 CONTRACTOR'S EMPLOYEES: The Contractor shall be responsible to the City for acts and omissions of the Contractor's employees, subcontractors and their agents and employees, and other persons or entities performing portions of the project for or on behalf of the Contractor or any of the subcontractors.

The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit person or persons not skilled in tasks assigned to them.

3-11 INSPECTORS: Inspectors may be appointed by the Engineer or City to see that the work is performed in accordance with the Plans and Specifications.

Inspectors shall have authority to suspend all or a portion of the work which is not being properly performed and, subject to the final decision of the Engineer, to condemn and reject defective work and materials.

Inspectors shall have no authority to permit deviation from the Plans and Specifications and the Contractor shall be liable for any deviations made without a written order from the Engineer. If requested by the Contractor, the suspension order will be given in writing. Inspectors shall not act as foremen or perform other duties for the Contractor.

3-12 LANDS by CITY: Where the work passes over or through private property, the City will secure right-of-way or easement. The Contractors shall not receive any extra compensation or be entitled to any extras because of delay on the part of the City in obtaining right-of-way or easement.

3-13 LANDS by CONTRACTOR: Any additional land or access thereto that may be required for temporary construction facilities or for storage of materials shall be provided by the Contractor with no liability to the City. The Contractor shall confine his apparatus and storage materials and operation of his workers to those areas described in the Plans and Specifications and such additional areas which he may provide as approved by the Engineer.

3-14 PRIVATE PROPERTY: The Contractor shall not enter upon private property for any purpose without having previously obtained permission from the City. The Contractor shall be responsible for the preservation of, and shall use every precaution to prevent damage to all trees, shrubbery, plants, lawns, fences, culverts, bridges, pavements, driveways, sidewalks, etc.; all water, sewer and gas lines; all conduits; all overhead pole lines or appurtenances thereof; and all other public or private property along or adjacent to the work.

3-15 REMOVAL of CONSTRUCTION EQUIPMENT, TOOLS and SUPPLIES: At the termination of this Contract, before acceptance of the work by the City, the Contractor shall remove all of his equipment, tools and supplies from the property of the City. Should the Contractor fail to remove such equipment, tools and supplies, the City shall have the right to remove them. (See also GC 7-12).

3-16 CITY'S RIGHT to CORRECT DEFICIENCIES: If the Contractor should neglect to prosecute the work properly or fail to perform any provision of this Contract, the City after ten (10) days written notice to the Contractor may, without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor. (See also GC 7-12).

3-17 CITY'S RIGHT to TERMINATE CONTRACT and COMPLETE the WORK: The City has the right to terminate the employment of the Contractor for any of the following reasons:

1. The Contractor is adjudged bankrupt, makes a general assignment for the benefit of creditors, or becomes insolvent;
2. Failure of Contractor to supply adequate properly skilled workmen or proper materials;
3. Failure of Contractor to make prompt payment to subcontractor for material or labor;
4. Any disregard of laws, ordinances or proper instructions of the Engineer;

5. Assignment or work without permission of the City;
6. Abandonment of the work by Contractor;
7. Failure to meet the work progress schedule set forth in the Contract;
8. Unnecessary delay which, in the judgment of the Engineer, will result in the work not being completed in the prescribed time.

Termination of the Contract shall be preceded by seven (7) days written notice by the City to the Contractor and his surety stating the grounds for termination and the measures, if any, which must be taken to assure compliance with the Contract. The Contract shall be terminated at the expiration of such seven (7) day period unless the City Council shall withdraw its notice of termination.

Upon termination of the Contract by the City, the City may complete the work required by the Contract by whatever means it deems expedient, including requiring the Contractor's surety to complete the work.

The taking over of the work by the City upon contract termination shall not affect the right of the City to recover liquidated damages from the Contractor or his surety for failure to complete the Contract.

In the event that the Contractor involuntarily abandons the work, fails or refuses to complete the work embodied in the Contract or fails to pay just claims for labor or material, the City reserves the right to charge against the Contractor all extra legal, engineering, or other costs resulting from such abandonment, failure or refusal. Legal costs will include the City's cost of prosecuting or defending any suit in connection with such abandonment, failure or refusal, and non-payment of claims wherein the City is made co-defendant, and the Contractor agrees to pay all costs, including reasonable attorney's fees.

When the City assumes control of the work under the Contract pursuant to termination the City may take possession of the work and all material, tools and equipment therein belonging to the Contractor and may use the same to complete the work at Contractor's expense.

Upon Contract termination, 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 expense of finishing the work, including compensation for additional managerial and administrative services, the excess shall be paid to the Contractor. If such expense exceeds the unpaid balance, the Contractor shall pay the difference to the City. The expenses incurred by the City as herein provided and the damages incurred through the Contractor's default shall be certified by the Engineer. (See also GC 7-12).

3-18 CONTRACTOR'S RIGHT to TERMINATE CONTRACT: The Contractor may terminate the Contract upon ten (10) days written notice to the Owner and the Engineer for any of the following reasons:

1. If an order of any court or other public authority caused the work to be stopped or suspended for a period of 90 days through no act or fault of the Contractor or his employees.

2. If the Engineer should fail to act upon any Request for Payment, in the manner set forth in GC 7-06, within ten (10) days after it is presented in accordance with the General Conditions.
 3. If the City should fail to act upon any Request for Payment, in the manner set forth in GC 7-07, within 31 days after its approval by the Engineer.
 4. If the City should fail to pay the Contractor any sum within 31 days after its award by arbitrators.
- 3-19 INJUNCTIONS: If by reason of any court proceedings, instituted by any third party or by the City affecting, directly or indirectly, the construction or completion of any portion or portions of this improvement, the Contractor or the City of Eden Prairie shall be unable to construct or complete said portions of the work, and if in consequence thereof it shall in the discretion of the City Council, be impractical to construct or complete any other portion or portions thereof, the Contractor shall, and does hereby waive any and all claims for damages because of such inability to complete the improvement as planned, and the Engineer shall have the right to report such improvement as completed and file his final estimate thereon as provided for in the full completion of other improvements in the City, and the Contractor shall accept in full payment of his work upon said improvement, and as a cancellation of his Contract thereof, a sum of money determined in strict accordance with his proposal for the Contract, on the basis of the work actually completed up to the time of stopping thereof.
- 3-20 RIGHTS of VARIOUS INTERESTS: Wherever work being done by the City's employees or by other contractors is contiguous to work covered by this Contract, the respective rights of the various interests involved shall be established by the Engineer, to secure the completion of the various portions of the work in general harmony.
- 3-21 SEPARATE CONTRACTS: The City reserves the right to let other contracts in connection with this work. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate his work with theirs.

If any part of the Contractor's work depends upon the proper execution or results of 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. His failure to so inspect and report shall constitute an acceptance of the other contractor's work after the execution of his work.

To insure the proper execution of his work, the Contractor shall measure work already in place and shall at once report to the Engineer any discrepancy between the executed work and the drawings.

- 3-22 SUBCONTRACTS: At the time specified by the Contract Documents or when requested by the Engineer, the Contractor shall submit in writing to the City for approval the names of the subcontractors proposed for the work. Subcontractors may not be changed except at the request of and with the approval of the City. The Contractor is responsible to the City for the acts and omissions of his employees and Subcontractors. The Contract Documents shall not be construed as creating any contractual relation between any subcontractor and the City.

The Contractor agrees to bind every subcontractor and every subcontractor agrees to be bound by the terms of the Contract Documents as far as applicable to his work, including the following

provisions of this Section, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the City Engineer.

The Subcontractor agrees to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities that the Contractor, by those documents, assumes toward the City. The Contractor agrees to be bound to the Subcontractor by all the obligations that the City assumes to the Contractor under the terms of said documents, and by all the provisions thereof affording remedies and redress to the Contractor from the City.

The Contractor shall not assign, sublet, or transfer the whole or any part of the work herein specified without the written consent of the City. Any such assignment, subletting, or transfer shall not in any manner relieve the Contractor from any of the responsibilities assumed herein.

For convenience of reference and to facilitate the letting of contracts and subcontracts, the Specifications are separated into title sections. Such separations shall not, however, operate to make the Engineer an arbiter to establish limits to the contracts between Contractor and Subcontractor.

- 3-23 WORK DURING an EMERGENCY: The Contractor shall perform any work and shall furnish and install any materials and equipment necessary during an emergency endangering life or property. In all cases, he shall notify the Engineer of the emergency as soon as practical, but he shall not wait for instructions before proceeding to properly protect both life and property (See also GC 4-03). In cases where the Contractor cannot or does not meet the emergency, the City may take appropriate action to protect life and safety.
- 3-24 ORAL AGREEMENTS: No oral order, objection, claim or notice by any party to the others shall affect or modify any of the terms or obligations contained in any of the Contract Documents, and none of the provisions of the Contract Documents shall be held to be waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver or modification thereof in writing, signed by the parties to be bound or by the representatives of the parties authorized to enter into such a waiver or modification, and no evidence shall be introduced in any proceeding of any other waiver or modification.
- 3-25 CONSTRUCTION SCHEDULE: After being awarded the Contract, the Contractor shall prepare and submit to the Engineer for approval a progress schedule which will insure the completion of the project within the time specified. Adequate equipment and forces shall be made available by the Contractor to start work immediately upon order of the Engineer and to carry out the schedule to completion of the Contract within the time specified.
- 3-26 DELAYS and EXTENSION of CONTRACT TIME: The Contractor herewith specifically waives claims for damages for any hindrance or delay. He will, in lieu thereof, be granted extensions of time for which liquidated damages will not be claimed by the City for the following causes: A delay caused the Contractor by any suit or other legal action against the City will entitle the Contractor to an equivalent extension of time unless the period of such delay exceeds 90 days. When such period is exceeded, the City will, upon request by the Contractor in writing, either terminate the Contract, or grant a further extension of time, whichever as may at that time appear most desirable to both parties.

If the Contractor be delayed at any time in the progress of the work by an act of neglect of the City or the Engineer or any employees of either, or by any other Contractor employed by the City, or by strike, fire, unusual delay in transportation, unavoidable casualties, or other causes beyond the

Contractor's control, or by any cause which, in the opinion of the Engineer, shall justify the delay, then the time of completion shall be extended for such reasonable time as the Engineer may decide. No such extension shall be made for delay occurring more than seven (7) days before claim therefore made in writing to the Engineer.

Shutdowns due to improper work, or otherwise due to the Contractor's operation, are not cause for extension of time.

If during the term of this Contract, the volume of the specified work, measured in dollars, is increased over the total value shown on the Contractor's proposal at the time the award of Contract is made, the Contractor will be granted an extension proportionately equal to the increase in the total value. Should unforeseen conditions require the performance under an Extra Work Order, of work more complex or difficult than that originally specified and shown on the Plans, and such work, in the Contractor's opinion, requires more time to execute than the proportional increase in dollar value, the Contractor shall state to the Engineer, in writing, prior to the performance of such work, his estimate of the added time required for such work.

The City will, if such estimate be reasonable, allow an added extension of time equal to the difference between the total time required and the proportional increase in the dollar value of the work.

SECTION 4 - SCOPE OF WORK

4-01 **ESTIMATE of QUANTITIES:** The schedule of quantities, although stated with as much accuracy as is possible in advance, is approximate only and is assumed solely for the purpose of comparing bids. The quantities on which payments will be made to the Contractor are to be determined by measurements of the work actually performed by the Contractor as specified in the Contract Documents. (See GC SECTION 7).

4-02 **ADDITIONAL INSTRUCTIONS:** If the instructions and Plans are not sufficiently clear to permit the Contractor to proceed with the work, the Engineer shall, either upon his own initiative or upon the request of the Contractor, furnish additional written instructions, together with additional drawings as may be necessary. When such request is made by the Contractor, it must be in ample time to permit the preparation of the instructions and drawings by the Engineer before the construction of the work covered by them is undertaken. Such additional instructions and drawings shall be consistent with the Contract Documents and shall have the same force and effect as if contained in the Contract Documents.

For the purpose of avoiding delays in the preparation of such additional instructions and drawings, the Engineer and the Contractor shall jointly prepare a schedule showing the time for the commencement of the work to be included in them and the time the Contractor shall furnish the necessary shop drawings which may be necessary for their preparation. The Contractor shall do no work without proper drawings or instructions and shall, at his own expense, replace any work not in accordance with such drawings and instructions.

4-03 **CHANGES or ALTERATIONS in the WORK:** The City, without invalidating the Contract, may order extra work or make changes by altering, adding to or deducting from the work; the Contract sum being adjusted according to the respective unit bid prices. All such work shall be executed under the conditions of the original Contract, except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

Any claims for compensation adjustment shall be in accordance with MnDOT 1517. Consequently, if the Contractor claims that any instructions by drawings or otherwise issued after the date of the Contract involved extra cost under the Contract, he shall give the Engineer written notice thereof within seven (7) days, after the receipt of such instructions and in any event before proceeding to execute the work, except emergency endangering life or property, and the procedure shall then be provided for elsewhere herein for changes in the work. No such claim shall be valid unless so made.

In giving instructions, the Engineer shall have authority to make minor changes in the work, not involving extra cost, and not inconsistent with the purposes of the work but otherwise (except in an emergency endangering life or property) no extra work or change shall be made unless in pursuance of a written order by the Engineer, and provided that such work or change does not change the dollar value of the total contract amount or 25% of any major contract item (as defined in the MnDOT Standard Specification for Construction).

- 4-04 INTERPRETATIONS and CHANGE ORDERS: No oral interpretation shall be made to the Contractor as to the meaning of any of the Contract Documents, or to modify any of the provisions of the Contract Documents. Every request for an interpretation shall be made in writing and addressed and forwarded to the Engineer. The City will not be responsible for any other explanation or interpretation of the Plans and Specifications.

If unforeseen conditions require a change in the dimensions of a structure, location of underground pipes, or major variations of a similar nature from the original Plans, necessitating exceeding the reasonable limits defined below, or being of the nature of a substantial departure from the original Plans, such change shall be covered by a change order. The change order is to set forth in complete detail the nature of the change and reasons therefore. The compensation to be paid the Contractor and whether it is an addition or a reduction with respect to the original Contract costs is also to be covered in detail. Should additional or supplemental drawings be required, they will be furnished by the City Engineer.

- 4-05 SALVAGE: Unless otherwise indicated on the Plans or in the Special Conditions, all castings, pipe and any other material taken from the work shall be the property of the Contractor.

- 4-06 CLEANUP: The Contractor shall at his own expense, clean up and remove all refuse and unused materials of any kind resulting from the work. Upon failure to do so within 72 hours after request by the Engineer, the work may be done by the City and cost thereof be charged to the Contractor and deducted from his final estimate. (See also GC 7-12).

- 4-07 TAXES: The Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by him in accordance with the law of the place where the work is to be performed.

- 4-08 PERMITS: The City of Eden Prairie will apply for all necessary permits unless otherwise noted. The Contractor shall secure and pay for all necessary bonds and meet all additional requirements of these permits.

The Contractor shall also be responsible for obtaining a permit from the City of Eden Prairie Engineering Division for any project that involves work within City right-of-way or public easements. The permit shall include, but not be limited to; utility connections and installations, underground construction, placement of obstructions or structures, removal of existing streets and connections to any existing City facilities.

SECTION 5 - MATERIALS AND WORKMANSHIP

5-01 **QUALITY of EQUIPMENT and MATERIALS:** In order to establish standards of quality, the Engineer has, in the detailed Specifications, referred to certain products by name and catalog number. This procedure is not to be construed as eliminating from competition other products of equal or better quality by other manufacturers where fully suitable in design as determined by the Engineer.

Whenever in these Specifications a material or article is specified by using the specific description or name of proprietary product, or name of a manufacturer or vendor, rather than by using descriptive detail or substance and function, any article which will perform the duties imposed adequately and to the same effectiveness as determined by the Engineer, will be acceptable as a substitute in lieu of the material or articles so specified.

The source of supply of the materials to be used shall be approved by the Engineer before delivery is started. The approval of the source of any material is effective as long as the material itself conforms to the Specifications. Only materials conforming to the requirements of these Specifications shall be used in the work. The source of any material shall not be changed at any time without the written approval of the Engineer. The Contractor may be required at any time to furnish a complete statement of the origin, composition and manufacturer of any or all materials required in the work, or to submit samples of the same.

Unless otherwise specified, all materials shall be new and both workmanship and material shall be of good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials or tools used by him.

All materials, supplies, and articles furnished shall, whenever so specified, and otherwise wherever practical, be the standard stock products of recognized reputable manufacturers as determined by the Engineer.

The Contractor shall furnish a complete list of proposed desired substitutions, together with such engineering and catalog data as the Engineer may require. List and information must be submitted prior to submittal of first progress payment estimate.

The Contractor shall abide by the Engineer's judgment when proposed substitute materials or items of equipment are judged to be unacceptable and shall furnish the specified material or item of equipment in such case. All proposals for substitutions shall be submitted in writing by the Contractor and not by individual trades or material suppliers. The Engineer will approve or disapprove proposed substitutions in writing within a reasonable time. No substitute material shall be used unless so approved in writing.

5-02 **MATERIALS FURNISHED by the CITY:** Materials specifically indicated will be furnished by the City. The fact that the City is to furnish material is conclusive evidence of its acceptability for the purpose intended, and the Contractor may continue to use it until otherwise directed. If the Contractor discovers any defect in material furnished by the City, he shall notify the Engineer. Materials furnished by the City, which are not of local occurrence, will be provided at locations listed on Plans or in Specifications. The Contractor shall be responsible for material loss or damage, including that caused by third parties, after his receipt of material.

5-03 MATERIALS FURNISHED by the CONTRACTOR: All materials used in the work shall meet the requirements of the respective Plans and Specifications. All material not otherwise specifically indicated shall be furnished by the Contractor.

5-04 STORAGE of MATERIALS: Materials shall be stored so as to insure the preservation of their quality and fitness for the work and such materials, even though approved before storage, shall be subject to test and must meet the requirement of these Specifications at the time it is proposed to use them in the work. Materials shall be stored in a manner that will facilitate inspection. The portion of the right-of-way not required for public travel may, with the consent of the Engineer, be used for storage purposes, and for the placing of the Contractor's plant and equipment; but any additional space required; unless otherwise stipulated, shall be provided by the Contractor at his expense.

From the commencement of the work until the completion of the same, the Contractor shall be solely responsible for the care of the work covered by this Contract and for the materials delivered at the site intended to be used in the work and all injury or damage to the same from whatever cause, shall be made good at his expense before the final estimate is made. He shall provide suitable means of protection for and shall protect all materials intended to be used in the work and all work in progress as well as completed work. He shall take all necessary precautions to prevent injury or damage to the work in progress of construction by flood, freezing or from inclemencies of the weather at any and all times and only approved methods shall be used for this purpose.

5-05 REJECTED WORK and MATERIALS: All materials which do not conform to the requirements of the Contract Documents, are not equal to samples approved by the Engineer, or are in any way unsatisfactory or unsuited to the purpose for which they are intended, shall be rejected and shall be removed immediately from the right-of-way, unless otherwise permitted. No materials which have been rejected -- the defects on which have been corrected or removed -- shall be used until approval has been given.

If the Contractor does not remove such condemned work and materials within a reasonable time fixed by written notice, the City may remove them and may store the materials at the expense of the Contractor. If the Contractor does not pay the expense of such removal within ten (10) days thereafter, the City may, upon ten (10) days written notice, sell such materials at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs and expenses that should have been borne by the Contractor.

The Contractor shall promptly remove from the premises all materials condemned by the Engineer as failing to conform to the Contract, whether incorporated in the work or not and the Contractor shall promptly replace and re-execute his own work in accordance with the Contract Documents without expense to the City and shall bear the expense of making good all work of the other contractors destroyed or damaged by such removal or replacement.

Work done contrary to or regardless of the instructions of the Engineer, work done without lines, grade or cross section stakes and grades shown on the Plans or as given by the Engineer, or any deviation made from the Plans and Specifications without written authority will be considered unauthorized and at the expense of the Contractor, and will not be measured or paid for by the City. Any and all work so done may be ordered removed and replaced immediately at the Contractor's expense. (See also GC 7-09).

5-06 MANUFACTURER'S DIRECTIONS: Manufactured articles, material and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer unless herein specified to the contrary.

- 5-07 CUTTING and PATCHING: The Contractor shall do all necessary cutting and patching of the work that may be required to properly receive the work of the various trades or as required by the Plans and Specifications to complete the work. He shall restore all such cut or patched work as directed by the Engineer. Cutting of existing structures that will endanger the work, adjacent property, workmen or the public shall not be done unless approved by the Engineer and under his direction.
- 5-08 PATENTS: All fees or royalties for patented inventions, equipment, or arrangements that may be used in any manner connected with the construction or erection of the work, or any part thereof, shall be included in the price mentioned in the Contract.
- 5-09 CONTRACT BOND: Before execution of this Contract and within ten (10) days after the notice of acceptance thereof by the City to the Contractor, the Contractor shall furnish the City a Payment Bond and Performance Bond conditioned as required by Minnesota Statutes, Section 574.26, and the Contract Documents. The Performance and Payment Bonds shall remain in full force and effect through the guaranty period.
- 5-10 GUARANTY: The Contractor shall warrant and guarantee and agree to maintain the stability of all work and materials done, furnished and installed under this Contract for a period of two (2) years after final payment in accordance with the provisions of the Contract Agreement and the Performance Bond required by GC 5-09.

The date of final payment is considered the date listed on the City approved final estimate of payment.

The obligation of the Contractor pursuant to this section shall be in addition to and not in limitation of any obligations imposed upon him by any other provision of the Contract Documents or any other obligation imposed or prescribed by law.

The Contractor warrants to the Owner that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. This warranty is not limited by the provisions of Section 7.

- 5-11 OVERWEIGHT POLICY: The Contractor shall be advised that the City of Eden Prairie will closely adhere to the policy of MnDOT on the payment of materials brought to the project site on overweight loads. This policy is defined in the MnDOT Construction Administration Manual, Section 5-591.380, dated May 16, 2011.

SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

- 6-01 CONTRACTOR'S RESPONSIBILITIES: The Contractor shall furnish all necessary machinery, tools, labor and materials of every character required, and shall fully complete the work in accordance with the Plan, Specifications, and Detail Drawings, for the prices bid. All equipment to be used must be approved by the Engineer prior to starting the work. The entire work to be performed under the Contract for this improvement is to be at the Contractor's risk, and he is to assume the responsibility for and risk of all damages to the work or to property adjacent to or on the line of said work. The Contractor shall have charge of and be responsible for entire improvement until its completion and acceptance. It shall be his responsibility to maintain all stages of work in a

safe and suitable condition at all times, including nights, weekends, and holidays. The Contractor shall make observations of his work during such periods as are necessary to insure proper care of the work. He shall be liable for any defects which may appear or be discovered on his work before the final payment herein specified.

Whenever the Contractor is not present on the work, directions will be given to the Superintendent or Foreman who may have immediate charge thereof, and shall by him be received and strictly obeyed. The Contractor shall designate one person who shall have charge of the job and to whom the inspector shall notify regarding the work. If any person employed on the work shall refuse or neglect to obey the directions of the City Engineer, or his duly authorized representative, in anything relating to the work, or shall appear to be incompetent, disorderly or unfaithful, he shall, upon the request of the City Engineer be at once discharged and not again employed upon any part of the work.

The Contractor shall submit, at such times as may reasonably be requested by the Engineer, schedules which shall show the order in which the Contractor proposes to carry on the work, with the dates at which the Contractor will start the several parts of the work, and estimated dates of completion of the several parts.

The Contractor and his sureties shall save harmless the City and any and all of its officers, agents, consultants and employees from any claims and demands or losses, damages, costs, charges and expenses of every nature and description, whether direct or indirect, because of the performance of this Contract, including all injuries to workmen or persons other than workmen and for all property damages. The Contractor shall indemnify the City against any such loss or any liability of any nature, whether direct or indirect, and the City reserves the right to deduct from any money due the Contractor the amount of any judgment of claims therefore.

The obligations of the Contractor do not extend to the liability of the consultant or Special Engineer, his agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications which are certified by the Special Engineer. The approval of the above documents by the Special Engineer shall be subject to the conditions, limitations and exceptions stated on such documents and in the Contract Documents. No approval of any document by the Special Engineer shall be implied. The Special Engineer shall not be deemed to have approved any document unless such document bears the Special Engineer's Certificate or Seal.

6-02 **RESPONSIBLE CONTRACTOR:** Contractor warrants under oath that Contractor is in compliance with the minimum criteria required of a “responsible contractor” as that term is defined in Minnesota Statutes § 16C.285, subd. 3. Contractor has provided to City a list of all of its first-tier subcontractors and motor carriers that it intends to retain for work on the project. The Contractor has obtained from all subcontractors and motor carriers with which it will have a direct contractual relationship a signed statement under oath by an owner or officer verifying that the subcontractor or motor carrier meets all of the minimum criteria in § 16C.285, subd. 3. If Contractor retains additional subcontractors or motor carriers on the project after submitting its verification of compliance, the Contractor shall obtain verification of compliance from each additional subcontractor and motor carrier with which it has a direct contractual relationship and shall submit to the City a supplemental verification confirming the subcontractor’s and motor carrier’s compliance with subdivision 3, clause (7), within 14 days of retaining the additional subcontractors or motor carriers. Contractor shall submit to the City upon request copies of the signed verifications of compliance from all subcontractors and motor carriers of any tier pursuant to Minn. Stat. §

16C.285, subd. 3(7). A false statement under oath, by Contractor, subcontractor, or motor carrier, verifying compliance with any of the minimum criteria may result in termination of the Contract.

- 6-03 DATA PRACTICES ACT: The Contracting Party shall at all times abide by the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13. Government Data Practices, to the extent that the Act is applicable to data and documents in the hands of the Contractor.
- 6-04 DISCRIMINATION: In performance of this contract, the Contractor shall not discriminate on the grounds of or because of race, color, creed, religion, national origin, sex, marital status, status with regards to public assistance, disability, sexual orientation, or age against any employee of the Contractor, and subcontractor of the Contractor, or any applicant for employment. The Contractor shall include a similar provision in all contracts with subcontractors to this contract. The Contractor further agrees to comply with all aspects of the Minnesota Human Rights Act, Minn. Stat. 363.01, et seq., Title VI of the Civil Rights Act of 1964, and the American with Disabilities Act of 1990.
- 6-05 USE of PREMISES: The Contractor shall confine his equipment, storage of materials and operation or work to the limits indicated by law, ordinances, permits or direction of the Engineer, and shall not unreasonably encumber the premises with his materials.
- 6-06 PRIVILEGES of CONTRACTOR in STREETS, RIGHTS-OF-WAY and EASEMENTS: For the performance of the Contract, the Contractor will be permitted to occupy such portions of streets or alleys, or other public places, or other rights-of-way, as shown on the Plans or as permitted by the Engineer. A reasonable amount of tools, materials and equipment for construction purposes may be stored in such space, but not more than is necessary to avoid delays in the construction. Excavated and waste materials shall be piled or stacked in such a way as not to interfere with spaces that may be designed to be left free and unobstructed, nor inconvenience occupants of adjoining property. Other Contractors of the City may, for all purposes required by their contracts enter upon the work and premises used by the Contractor, and the Contractor shall give to other contractors of the City all reasonable facilities and assistance for the completion of adjoining work. Any additional grounds desired by the Contractor for his use shall be provided by him at his own cost and expense.

Where the work encroaches upon right-of-way of any railway or State or County Highway, the City will apply for the necessary easement or permit for the work. The Contractor shall secure the permit, pay the cost of original permit fees and provide bonds as required at no additional compensation. Where railway tracks or such highway are to be crossed, the Contractor shall observe all the regulations and instructions of the railway company and Highway Department as to methods of doing the work, or precautions for safety of property and the public. All negotiations with the railway company and Highway Department, except the right-of-way, shall be made by the Contractor at his expense. The Contractor will not be paid direct compensation for such railway or highway crossing, unless so provided in the Special Conditions and Proposal.

- 6-07 SAFETY: Precautions shall be exercised at all times by the Contractor for the protection of persons, employees and property. The safety provisions of applicable laws and local building and construction codes shall be observed.

The Contractor is solely responsible for the safety, proper construction and perfection of the entire work until the same has been finally accepted and paid for by the City. The Contractor is responsible for conducting his work in compliance with the requirements of applicable State and Federal laws, and the rules and regulations of such governmental agencies having jurisdiction over such operations.

The Contractor shall be solely responsible for providing temporary ladders, guard rails, shoring, bracing, dewatering, if required, warning signs, night lights, and other safeguards desirable or required by the Engineer and by the State and Federal laws.

The Contractor shall provide and maintain, at his own expense and on a 24-hour basis, all necessary safeguards such as watchmen, warning signs or signals, barricades and night lights at all unsafe places at or near the work. Special care shall be exercised to prevent vehicles, pedestrians, and livestock from falling into open trenches or being otherwise harmed as a result of the work.

Excavations in or adjacent to public streets or alleys in which water stands more than one foot deep shall be securely barricaded with snow fence so as to prevent access by small children at all times work is not being carried on at the site of excavation. Barricades shall be painted in a color that will be visible at night. From sunset to sunrise, the Contractor shall furnish and maintain at least two lights at each barricade. A sufficient number of barricades shall be erected to keep vehicles from being driven on or into any work under construction. The Contractor shall furnish watchmen in sufficient numbers to protect the work. The Contractor shall in all cases maintain safe passageways at all road crossings, crosswalks and street intersections, and shall do all other things necessary to prevent accident or loss of any kind.

6-08 FAILURE to PAY for LABOR and MATERIALS: If, at any time, the Contractor fails to pay the Subcontractor or the laborers employed upon the work, or fails to pay for the materials used therein, the City may withhold from the money which may be due the Contractor under this agreement such amount or amounts as may be necessary for the payment of such Subcontractors, laborers, or materials, and may, acting as agent for the Contractor, apply the same to such payments and deduct the same from the final estimate of the Contractor.

6-09 MOVING of PUBLIC and PRIVATE UTILITIES: The City will give reasonable notice to all affected utility companies of necessary movement of their installations prior to commencement of the work. It shall be the responsibility of the Contractor to coordinate his work with that of the utilities in such manner as to cause the least possible interference, and as may be further provided in the Special Conditions and Specifications.

It is provided that no utility, private or public, shall be moved to accommodate the Contractor's equipment or his method of operation when such utility does not conflict with the installation of the improvement under construction unless the costs of such removal shall be at the expense of the Contractor.

The Contractor shall notify the proper representatives of any public utility, corporation, and company or individual, not less than 48 hours in advance of any work which might damage or interfere with the operation of their or his property along or adjacent to the work.

6-10 PROTECTION of PUBLIC and PRIVATE UTILITIES: The Contractor shall support and protect by timbers or otherwise, all pipes, conduits, poles, wires or other apparatus which may be in any way affected by the work. If, through the Contractor's operations, any of said pipes, conduits, poles, wires, or apparatus should be damaged, they shall be repaired by the authorities having control of same, and the expenses of such repairs shall be charged to the Contractor.

The Contractor shall indemnify and save the City harmless from claims for any damage done to any street or other public property, or to any private property by reason of breaking of any water pipe, sewer or gas pipe, electric conduit, or other utility by or through his negligence.

The Contractor shall restore, or have restored at his own cost and expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding, or otherwise restoring as may be directed, or he shall make good such damage from injury in a manner acceptable to the City or the Engineer. In case of failure on the part of the Contractor to restore such property or make good such damage or injury, the Engineer may, upon 48 hours written notice under ordinary circumstances and without notice when a nuisance or hazardous condition results, proceed to repair, rebuild, or otherwise restore such property as may be determined necessary, and the cost thereof will be deducted from any monies due to the Contractor under this Contract and if not so deducted, the Contractor will be obligated to forthwith reimburse the City for the cost thereof.

The Contractor shall indemnify and save the City harmless from claims brought for or on account of any damage, maintenance, removal or replacement, or relocation of mains, conduits, pipes, poles, wires, cables or other such structures of private utility firms or corporations, whether underground or overhead, that may be caused or required by the Contractor during the time the work is in progress. In cases where the alignment, as shown on the Plans, coincides with the existing location of either an overhead or underground privately owned utility so that, in the opinion of the Engineer, the relocation of said utility is required to complete the installation, the City shall not be responsible for any cost associated for such relocation.

6-11 DAMAGE to EXISTING IMPROVEMENTS and UTILITIES: Prior to construction, the Contractor shall obtain field locations or other assistance as may be required to determine the existence and location of gas main and other private utilities as well as public utilities of the City, County or State which may be underground or overhead within street and highway right-of-way or within easements and which may be interfered with under this Contract.

Existing underground, surface or overhead structures are not necessarily shown on the Plans, and those shown are only approximately correct and no responsibility is assumed by the City or the Engineer for the accuracy of location. The Contractor shall make such investigations as are necessary to determine the extent to which existing structures may interfere with the work contemplated under this Contract.

The sizes, locations and depths of such structures as are shown on the Plans and profiles are only approximately correct and the Contractor shall satisfy himself as to the accuracy of the information given.

The Contractor shall not claim or be entitled to receive compensation for any damages sustained by reason of the inaccuracy or the omission of any of the information given on the drawings, relative to the surface, overhead, or underground structure or by reason of his failure to properly protect and to maintain such structures.

The Contractor is to exercise extreme care in crossing or working adjacent to all utilities and shall be responsible to protect and maintain their operation during the time the work is in progress. The Contractor shall restore, at his own expense, any public structures such as water mains, water connections and appurtenances, sewers, manholes, catch basins and sewer connections which are damaged or injured in any way by his acts.

When existing sewers have to be taken up and removed, the Contractor shall, at his own cost and expense unless otherwise noted in the plans or special conditions, provide and maintain temporary outlets and connections for all private or public drains and sewers. The Contractor shall also take

care of all sewage and drainage which will be received from these drains and sewers, and for this purpose, he shall provide and maintain, at his own expense, adequate pumping facilities and temporary outlets or diversions. The Contractor, at his own expense, shall construct such troughs, pipes, or other necessary structures, and be prepared at all times to dispose of drainage and sewage received from these temporary connections until such time as the permanent connections are built and in service. The existing sewers and connections shall be kept in service and maintained under the Contract, except where specified or ordered to be abandoned by the Engineer. All water or sewage shall be disposed of in a satisfactory manner so that no nuisance is created and so that the work under construction will be adequately protected.

At all shaft sites and on all open cut work, the Contractor shall provide and maintain free access to fire hydrants, water and gas valves, manholes and similar facilities. Gutters and waterways shall be kept open or other satisfactory provisions made for the removal of storm water. The Contractor hereby agrees it will indemnify and defend the City for all damages which may be incurred by the City due to Contractor's failure to comply with these provisions.

The Contractor shall provide, at his own expense and cost, all methods for adequately draining the work and shall assume full responsibility and liability for damage to any persons or property resulting from such damage. No separate compensation will be paid for sub-drains, or other methods of draining, but the cost thereof shall be merged with such contract pay items as are provided in the Proposal and Contract.

No trees shall be cut except upon the specific authority of the Engineer. Trees adjacent to the work shall be protected from all damage by the construction operations. (See also GC 6-24)

- 6-12A MAINTENANCE of TRAFFIC: The Contractor is responsible for maintenance, control and the safeguarding of traffic within and immediately abutting the project as further outlined herein, and as may otherwise be provided in the Special Conditions. The City is responsible for maintenance, control, and safeguarding of traffic on all detours which do not lie within the project limits, unless otherwise required in the Special Conditions. The City agrees to make necessary arrangements with other governmental agencies to issue compliance with GC 6-09A through 6-09H.
- 6-12B STREET CLOSURES or PARTIAL CLOSURES: Streets may be closed to through traffic but shall not be closed to traffic until such closure has been approved by the City. Street closures shall be made in such a manner as to provide for maximum public safety and public convenience. They shall be opened to through traffic at such time as the work has been completed, or as the City may direct.
- 6-12C EXISTING TRAFFIC SIGNS and FACILITIES: The City will make all necessary adjustments to traffic signals and traffic signal activators at no cost to the Contractor. Existing traffic and street name signs which will interfere with construction will be removed by the City, as required by the Contractor's construction schedule. Upon completion of the project, the City will reset all such signs.
- 6-12D DETOURS: Detours outside the limits of the project shall be the sole responsibility of the City unless otherwise provided in the Special Conditions. Detours within the limits of the project, such as side street crossings, temporary bridges over freshly placed concrete, utilization of one or more lanes of the construction area for maintenance of traffic, and such related facilities for the maintenance of traffic, shall be included in the appropriate unit price or lump sum, as applicable.

- 6-12E LOCAL and EMERGENCY TRAFFIC: Local traffic shall be provided access to private properties at all times, except during some urgent stages of construction when it is impractical to carry on the construction and maintain traffic simultaneously, such as for the placing of asphalt concrete pavement, placing and curing of portland cement concrete pavement, and deep sewer excavations which prohibit safe travel of vehicular traffic. Emergency traffic such as police, fire and disaster units shall be provided reasonable access at all times.
- 6-12F PROTECTION of PEDESTRIAN and VEHICULAR TRAFFIC: The Contractor shall take every precaution to protect pedestrian and vehicular traffic.
- 6-12G RESTRICTION of PARKING: Where parking is a hazard to through traffic or to the construction work, it shall be restricted either entirely or during the time when it creates a hazard. Signs for this purpose will be initially furnished and placed by the City. The Contractor shall be responsible for and shall maintain the signs if they are used on any street which is directly involved in the construction work. If the parking signs are to be used beyond the confines of the work area, such as another street being used as a detour, the signs will be the responsibility of the City.
- 6-12H FLAGMEN: The Contractor shall furnish, at his own expense, all flagmen who may be needed.
- 6-13 TRAFFIC CONTROL WITHIN and ABUTTING the PROJECT: The Contractor shall place and maintain all signs, barricades and warning lights within the limits of the project on all streets, alleys and driveways entering the project so that approaching traffic will turn right or left on existing undisturbed streets before reaching the warning signs and barriers immediately abutting the project.
- Barricades shall be furnished by the Contractor. The Contractor shall insure that erected barricades conform to requirements of the "Manual on Uniform Traffic Control Devices".
- Unless otherwise provided in the Special Conditions, the City will assume responsibility for signs and traffic control devices beyond the limits hereinbefore described.
- 6-14 USE of EXPLOSIVES: Blasting will not be permitted in any case without specific authority of the City, and then only under such restrictions as may be required by the proper authorities.
- If it is necessary to use explosives in the performance of the work, the Contractor shall take out permits and comply with all the laws, ordinances and regulations governing the same. He shall fully protect all completed works as well as all overhead, surface or underground structures and shall be liable for any damage done to the work or to other structures on public or private property and injuries sustained by persons, by reason of the use of explosives and in his operations. Explosives shall be handled, used and fired only by experienced personnel. All firing shall be done by electricity. All explosive supplies shall be safely stored and protected in an approved manner. All such storage places shall be marked clearly "DANGEROUS EXPLOSIVES". Caps or other exploders shall not be stored at the place where dynamite or other explosives are stored.
- 6-15 RAILROAD CROSSINGS: Wherever a project is being constructed beneath, at grade or above railroad track, it shall be the Contractor's responsibility to contact the railroad company prior to constructing such crossings and to proceed with the construction as directed by the railroad company. The Contractor shall comply with all construction and additional insurance requirements of the railroad company. The Contractor shall hold the City harmless from any and all damages resulting from his operation in the construction at such crossings. (See also GC 6-05)

- 6-16 SANITARY PROVISIONS: The Contractor shall provide and maintain in a neat and sanitary condition such accommodations for the use of his employees as may be necessary to comply with the requirements and regulations of the Governmental Agency having jurisdiction thereover. He shall permit no public nuisance.

Suitable sanitary conveniences for the use of all persons employed on the work, properly screened from public observation, shall be provided and maintained by the Contractor.

- 6-17 WATER: The Contractor shall make arrangements with the proper City Officials or private parties for obtaining any water which may be needed at no additional compensation, unless a bid item for water has been provided in the Proposal Form.

- 6-18 NOISE ELIMINATION: The Contractor shall eliminate noise to as great an extent as possible at all times. Air compressing plants shall be equipped with silencers and the exhausts of all gasoline motors or other power equipment shall be provided with mufflers.

- 6-19 FOSSILS: If any fossils or treasures or other unusual or valuable geological formations are found in the progress of excavating, such fossils, treasure or samples of geological formations shall be carefully preserved by the Contractor, who shall convey such items to a State or Federal Agency concerned with their preservation and study. These items shall become the property of said State or Federal Agency.

- 6-20 RIGHT to USE IMPROVEMENT: The City shall have the right to open to traffic or public use any portion of this improvement prior to the final completion of the whole work, but the use of any part or portion of this improvement by the City, by the public, or by any person or party, shall not be construed as acceptance of any portion of the work prior to the time of final completion and acceptance of the entire improvement.

- 6-21 MONUMENTS and STAKES: The Contractor shall not disturb any monuments or stakes found on the line of this improvement until ordered by the Engineer. The Engineer will furnish and set all new monuments or stakes required along the line of this improvement, but the Contractor will be responsible for their protection.

In case any monument or stake is disturbed by the Contractor without orders from the Engineer, the Contractor will be charged the cost of the survey and other work required to relocate the same.

The Contractor shall give the City 48 hours written notice when he requires the service of the Engineer for laying out any portion of the work.

Re-staking of the project will be at the Contractor's expense.

The Contractor is required to take every precaution to protect all United States Public Land Survey (USPLS) monuments. In the event the monuments have to be disturbed, the Contractor must notify the Hennepin County Surveyor's office a minimum of 48 hours in advance.

- 6-22 DISCRIMINATION on ACCOUNT of RACE, CREED, or COLOR: The Contractor agrees that the provisions of Minnesota Statutes, Section 181.59, are as much a part of this Contract as if fully set forth herein.

6-23 INSURANCE AND INDEMNIFICATION:

1. Insurance

- a. General Liability. Prior to starting the Work, Contractor shall procure, maintain and pay for such insurance as will protect against claims or loss which may arise out of operations by Contractor or by any subcontractor or by anyone employed by any of them or by anyone for whose acts any of them may be liable. Such insurance shall include, but not be limited to, minimum coverages and limits of liability specified in this Paragraph, or required by law.
- b. Contractor shall procure and maintain the following minimum insurance coverages and limits of liability for the Work:

Worker's Compensation Statutory Limits

| | |
|----------------------|--|
| Employer's Liability | \$500,000 each accident \$500,000 disease policy limit \$500,000 disease each employee |
|----------------------|--|

| | |
|------------------------------|---|
| Commercial General Liability | \$1,500,000 property damage and bodily injury per occurrence \$2,000,000 general aggregate \$2,000,000 Products – Completed Operations Aggregate \$100,000 fire legal liability each occurrence \$5,000 medical expense |
|------------------------------|---|

| | |
|------------------------------------|---|
| Comprehensive Automobile Liability | \$1,000,000 combined single limit each accident (shall include coverage for all owned, hired and non-owned vehicles.) |
|------------------------------------|---|

| | |
|------------------------------|-------------|
| Umbrella or Excess Liability | \$1,000,000 |
|------------------------------|-------------|

- c. Commercial General Liability. The Commercial General Liability Policy shall be on ISO form CG 00 01 12 07 or CG 00 01 04 13, or the equivalent. Such insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the Commercial General Liability form arising from pollution, explosion, collapse, underground property damage or work performed by subcontractors.
- d. Contractor shall maintain "stop gap" coverage if Contractor obtains Workers' Compensation coverage from any state fund if Employer's liability coverage is not available.
- e. All policies, except the Worker's Compensation Policy, shall name the "City of Eden Prairie" as an additional insured on ISO forms CG 20 10 07 04 or CG 20 10 04 13; and CG 20 37 07 04 or CG 20 37 04 13, or their equivalent.

- f. All policies shall apply on a “per project” basis.
- g. All policies shall contain a waiver of subrogation in favor of the City.
- h. All policies shall be primary and non-contributory.
- i. All policies, except the Worker’s Compensation Policy, shall insure the defense and indemnity obligations assumed by Contractor under this Contract.
- j. Contractor agrees to maintain all coverage required herein throughout the term of the Contract and for a minimum of two (2) years following City’s written acceptance of the Work.
- k. It shall be Contractor’s responsibility to pay any retention or deductible for the coverages required herein.
- l. All policies shall contain a provision or endorsement that coverages afforded thereunder shall not be cancelled or non-renewed or restrictive modifications added, without thirty (30) days’ prior notice to the City, except that if the cancellation or non-renewal is due to non-payment, the coverages may not be terminated or non-renewed without ten (10) days’ prior notice to the City.
- m. Contractor shall maintain in effect all insurance coverages required under this Paragraph at Contractor’s sole expense and with insurance companies licensed to do business in the state in Minnesota and having a current A.M. Best rating of no less than A-, unless specifically accepted by City in writing.
- n. **A copy of the Contractor’s Certificate of Insurance which evidences the compliance with this Paragraph, must be filed with City prior to the start of Contractor’s Work.** Upon request a copy of the Contractor’s insurance declaration page, Rider and/or Endorsement, as applicable shall be provided. Such documents evidencing Insurance shall be in a form acceptable to City and shall provide satisfactory evidence that Contractor has complied with all insurance requirements. Renewal certificates shall be provided to City prior to the expiration date of any of the required policies. City will not be obligated, however, to review such Certificate of Insurance, declaration page, Rider, Endorsement or certificates or other evidence of insurance, or to advise Contractor of any deficiencies in such documents and receipt thereof shall not relieve Contractor from, nor be deemed a waiver of, City’s right to enforce the terms of Contractor’s obligations hereunder. City reserves the right to examine any policy provided for under this paragraph.
- o. **Effect of Contractor’s Failure to Provide Insurance.** If Contractor fails to provide the specified insurance, then Contractor will defend, indemnify and hold harmless the City, the 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 Contractor, its subcontractors,

agents, employees or delegates. Contractor agrees that this indemnity shall be construed and applied in favor of indemnification. Contractor also agrees that if applicable law limits or precludes any aspect of this indemnity, then the indemnity will be considered limited only to the extent necessary to comply with that applicable law. The stated indemnity continues until all applicable statutes of limitation have run.

If a claim arises within the scope of the stated indemnity, the City may require the 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.

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

2. Indemnification. Contractor will defend and indemnify City, its officers, agents, and employees and hold them harmless from and against all judgments, claims, damages, costs and expenses, including a reasonable amount as and for its attorney's fees paid, incurred or for which it may be liable resulting from any breach of this Agreement by Contractor, its agents, contractors and employees, or any negligent or intentional act or omission performed, taken or not performed or taken by Contractor, its agents, contractors and employees, relative to this Agreement. City will indemnify and hold Contractor harmless from and against any loss for injuries or damages arising out of the negligent acts of the City, its officers, agents or employees.

- 6-24 WORKING HOURS: The normal working hours under this Contract shall be between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday. The Contractor may apply for changes to these hours by writing to the City Engineer.

Work performed after dark shall be adequately illuminated.

- 6-25 TREES: Trees scheduled for removal shall be so designated by the Engineer. Unauthorized removal of trees by the Contractor shall be replaced caliper inch for caliper inch but in any event all replacement trees shall be Oak (or approved equal) and shall have a minimum 4" diameter and shall meet the requirements of MnDOT 3861. The replacement of trees so removed shall be at the expense of the Contractor.

SECTION 7 - MEASUREMENT AND PAYMENT

- 7-01 MEASUREMENT: The determination of pay quantities or work performed under the Contract will be made by the Engineer based upon the lines, grades, and cross sections given, or measurements made by him or his assistants. All items will be computed in the units in the Proposal.
- 7-02 CLAIMS: To receive any payment on this Contract, the invoice or bill must include the following signed and dated statement: **"I declare under penalty of perjury that this account, claim, or demand is just and correct and that no part of it has been paid."**
- 7-03 SCOPE of PAYMENT: The Contractor shall accept the compensation, as provided in the Contract, in full payment for furnishing all materials, labor, tools and equipment necessary to the

completed work and for performing all work contemplated and embraced under the Contract; also for loss or damage arising from the nature of the work, or from the action of the elements, or from any unforeseen difficulties which may be encountered during the prosecution of the work until the final acceptance by the City, and for all risks of every description connected with the prosecution of the work; also for all expenses incurred in consequence of the suspension or discontinuance of the work as herein specified; and for completing the work according to the Plans and Specifications. (See also GC 4-03).

Neither the payment of any estimate nor of any retained percentage shall relieve the Contractor of any obligation to make good any defective work or material. Payment will be made only for materials actually incorporated in the work. (For payment of materials on site, see GC 7-05).

The unit Contract prices for the various bid items of the Contract shall be full compensation for all labor, materials, supplies, equipment, tools and all things of whatsoever nature required for the complete incorporation of the item into the work the same as though the item were to read "In Place", unless the Plans and Specifications shall provide otherwise.

7-04 PAYMENT of EXTRA WORK: Adjustments, if any, in the amounts to be paid the Contractor by reason of any change, addition, or deduction, shall be determined by one or more of the following methods:

1. **FOR ITEMS COVERED BY THE PLANS AND SPECIFICATIONS:** The City reserves the right to increase or decrease, within reasonable limits, any of the quantities shown. The term "reasonable limits" shall mean a 25 percent increase or decrease in the quantities on any one Major Contract item. In the event the actual quantities differ more than the reasonable limits, an equitable revision of the unit price shall be made when requested by either the City or the Contractor.

This 25 percent limit does not apply to items specifically excluded or listed as optional by the City, nor to minor Contract items (items amounting to less than 5% of the total Contract).

2. **FOR ITEMS NOT COVERED BY THE PLANS AND SPECIFICATIONS:** If the Engineer orders, in writing, the performance of any work not covered by the Plans or included in the Specifications, and for which no item in the Contract is provided, and for which no unit price or lump sum basis can be agreed upon, then such extra work shall be done on a Cost-Plus-Percentage basis of payment as follows:
 - a. The Contractor shall be reimbursed for all costs incurred in doing the work and shall receive an additional payment of 5% of all such cost to cover his indirect overhead costs, plus 10% of all cost, including indirect overhead as his fee.
 - b. The term "cost" shall cover all payroll charges for men employed and supervision required under the specific order, together with all Worker's Compensation, Social Security, pension and retirement allowance and social insurance, or other regular payroll charges on same; the cost of all material and supplies required of either temporary or permanent character; rental of all power-driven equipment at agreed-upon rates, together with cost of fuel and supply charges on same; and any other costs incurred by the Contractor as a direct result of executing the order, if approved by the Engineer.

- c. The cost of the work done each day shall be submitted to the Engineer in a satisfactory form on the succeeding day, and shall be approved by him or adjusted at once.
- d. Monthly payments of all charges for Force Account Work in any one month shall be made on a monthly basis contingent upon City Council approval. These payments shall include the full amount of fee earned on the cost of the work done.

Claims for extra work not ordered in writing by the Engineer will not be allowed. (See also GC 4-02, 4-03, and 4-04).

7-05 PROGRESS PAYMENTS, RETAINED PERCENTAGE: Progress Payments will be issued on a monthly basis for all work completed to the end of the preceding month. Progress estimates shall be prepared on a City approved template by the Engineer as accurately as the available information will permit but the only estimate that is binding will be the final estimate. Before the final estimate is prepared, all quantities will be reviewed and rechecked. Progress payments will be made in cash or equivalent. The City will retain 5% of the total amount owing the Contractor until 30 days after the Contract has been completed and accepted by the City.

In accordance with Minnesota Statute 15.73, the Contractor may elect to provide securities in lieu of retainage. However, the Contractor shall inform the City of this intention and provide the proper securities in the amount of 5% of the total contract price prior to the first payment being made on the contract.

If no claims or liens have been filed within a 30-day period, the retained percentage will be paid within 25 days of the expiration thereof. Should any liens or claims be filed, the retained percentage will be held until satisfactory agreement is reached between the City, the Contractor and the Contractor's surety.

Monthly estimates may include 90% of the value of acceptable materials required in the construction, which have been delivered on the site of the work or adjacent railway siding, and for which acceptable provisions have been made for preservation and storage. Such material when so paid for by the City shall become the property of the City, and in the event of the default on the part of the Contractor, the City may use or cause to be used such materials in construction of the work provided for in the Contract. The amount paid by the City for materials shall reduce estimates due the Contractor as the material is used in the work.

The Contractor shall pay to any Subcontractor, within 10 days of the Contractor's receipt of payment from the City, for undisputed services provided by the Subcontractor. The Contractor shall pay interest of one and one-half percent per month or any part of a month to a Subcontractor on any undisputed amount not paid on time to the Subcontractor. The minimum monthly interest payment for unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, the Contractor shall pay the actual amount due to the Subcontractor.

The City may withhold, in addition to retained percentages, from payment to the Contractor such an amount or amounts as may be necessary to cover:

1. Defective work not remedied.
2. Claims for labor or materials furnished the Contractor or subcontractor, or reasonable evidence indicating probable filing of such claims.

3. Failure of the Contractor to make payments properly to subcontractors or for material or labor.
4. Amounts necessary to insure that an overpayment on the total Contract amount will not occur.
5. Evidence of damage to another contractor or private property.

The City may disburse and shall have the right to act as agent for the Contractor in disbursing such funds as have been withheld pursuant to this paragraph to the party or parties who are entitled to payment therefrom but the City assumes no obligation to make such disbursement. The City will render to the Contractor a proper accounting of all such funds disbursed.

7-06 ENGINEER'S ACTION on a REQUEST for PAYMENT: Within ten (10) days of submission of any Request for Payment by the Contractor, the Engineer shall:

1. Approve the Request for Payment as submitted; or
2. Approve such other amount as s/he shall decide is due the Contractor, informing the Contractor in writing of his or her reasons for approving the amended amount; or
3. Withhold the Request for Payment, informing the Contractor in writing of his or her reasons for withholding it.

7-07 CITY'S ACTION on an APPROVED REQUEST for PAYMENT: Within 30 days from the date of approval of a Request for Payment by the Engineer, the City shall:

1. Pay the Request for Payment as approved; or
2. Pay such other amount as it shall decide is due the Contractor, informing the Contractor and the Engineer in writing of it's reasons for payment of the amended amount; or
3. Withhold payment, informing the Contractor and the Engineer of it's reasons for withholding payment.

7-08 PAYMENT for UNCORRECTED WORK: Should the Engineer direct the Contractor not to correct work that has been damaged or that was not performed in accordance with the Contract Documents, an equitable deduction from the Contract amount shall be made to compensate the City for the uncorrected work.

7-09 PAYMENT for REJECTED WORK and MATERIALS: The removal of work and materials rejected under GC 5-05 and the re-execution of acceptable work by the Contractor shall be at the expense of the Contractor, and he shall pay the cost of replacing the work of other contractors destroyed or damaged by the removal of the rejected work or materials and the subsequent replacement of acceptable work.

Removal of the rejected work or materials and store of materials by the City, in accordance with GC 5-05, shall be paid by the Contractor within 10 days after written notice to pay is given by the City. If the Contractor does not pay the expenses of such removal and after ten (10) days written notice being given by the City of its intent to sell the materials, the City may sell the materials at auction or

at private sale and shall pay to the Contractor the net proceeds therefrom after deducting all the costs and expenses that should have been borne by the Contractor.

- 7-10 PAYMENT for WORK SUSPENDED by the CITY: If the work or any part thereof shall be suspended by the City and abandoned by the Contractor as provided in GC 3-03, the Contractor will then be entitled to payment for all work performed on the portions so abandoned, plus 15% of the value of the uncompleted portion of the abandoned work to compensate for overhead, plant expense, and anticipated profit, and which action shall terminate the Contract.
- 7-11 PAYMENT for WORK by the CITY: The cost of the work performed by the City in removing construction equipment, tools and supplies in accordance with GC 3-15, and correcting deficiencies in accordance with GC 3-16 and GC 4-06, shall be paid by the Contractor.
- 7-12 PAYMENT for WORK FOLLOWING CITY'S TERMINATION of the CONTRACT: Upon termination of the Contract by the City, in accordance with GC 3-17, no further payments shall be due the Contractor until the work is completed. If the unpaid balance of the Contract amount shall exceed the cost of completing the work, including all overhead costs, the excess shall be paid to the Contractor. If the cost of completing the work shall exceed the unpaid balance, the Contractor shall pay the difference to the City. The cost incurred by the City, as herein provided, and the damage incurred through the Contractor's default, shall be certified by the City, and approved by the Engineer.
- 7-13 PAYMENT for WORK TERMINATED by the CONTRACTOR: Upon termination of the Contract by the Contractor, in accordance with GC 3-18, the Contractor shall recover payment from the City for work performed, plus loss on plant and materials, plus established profit and damages, as approved by the Engineer.
- 7-14 RELEASE of LIENS: Before final payment is made to the Contractor for the work, the Contractor shall endeavor to obtain and deliver to the City a complete release of all liens arising out of this Contract or receipts in full in lieu thereof, but the Contractor may, if any sub-contractor refuses to furnish a release of lien or receipt in full, furnish a bond satisfactory to the City which will indemnify the City against any lien. The Contractor shall in either case supply a form evidencing Consent of Surety to final payment.
- If any lien remains unsatisfied after all payments are made to the Contractor, the Contractor shall refund to the City all money that the latter may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.
- 7-15 INCOME TAX WITHHOLDING: No final payment shall be made to the Contractor until the Contractor has provided satisfactory evidence to the City that the Contractor and each of its subcontracts has complied with the provisions of Minn. Stat. 290.92 relating to withholding of income taxes upon wages. A certificate by the Commissioner of Revenue shall satisfy this requirement.
- 7-16 AUDIT: The books, records, documents and accounting procedures and practices of the Contractor or other parties relevant to this agreement are subject to examination by the City and either the Legislative Auditor or the State Auditor (for a period of six years after the effective date of this Contract).
- 7-17 ACCEPTANCE and FINAL PAYMENT: When the Contractor shall have completed the work in accordance with the terms of the Contract Documents, the Engineer shall certify his acceptance to

the City and his approval of the Contractor's final Request for Payment, which shall be the Contract amount plus all approved additions less all approved deductions and less previous payments made. The Contractor shall furnish a notarized certificate that he has fully paid all debts for labor, materials, and equipment incurred in connection with the work, following which the City shall accept the work and release the Contractor except as to: (1) the conditions of the Performance Bond; (2) any liens, claims, security interests, or encumbrances arising out of the Contract and unsettled; (3) failure of the work to comply with the requirement of the contract documents; (4) the terms of any special warranties required by the contract documents; (5) any correction of faulty work after final payment; and (6) any other legal rights to the City. The City shall authorize payment of the Contractor's Final Request for Payment. The Contractor must allow sufficient time between the time of completion of the work and approval of the final request for payment for the Engineer to assemble and check the necessary data.

The approval of a request for a final or progress payments by the Engineer and the making of a final or progress payment to the Contractor does not relieve the Contractor of responsibility for faulty material or workmanship and the City by such payment does not waive any claims of overpayment resulting from mathematical error, unauthorized work, or from any other cause. No final payment shall be made to Contractor until Contractor has provided satisfactory evidence to the City that the Contractor and each of its Subcontractors has complied with Minnesota Statute 290.92 relating to withholding of taxes upon wages. A certificate by Commissioner of Revenue shall satisfy this requirement.

7-18 TERMINATION of CONTRACTOR'S RESPONSIBILITY: The Contract will be considered complete when all work has been finished, the final inspection made by the Engineer, and the project accepted in writing by the City. The Contractor's responsibility shall then cease, except as to the obligation set forth in Paragraph 5-10, as set forth in the Performance Bond and Payment Bond, as required by any guarantee provided herein, and as to any obligation imposed or prescribed by law.

7-19 CORRECTION of FAULTY WORK AFTER FINAL PAYMENT: The Contractor shall be held responsible for any and all defects in workmanship and materials which may be developed in any part of the entire installation furnished by him, and upon written notice by the Engineer shall immediately replace and make good without expense to the City any such faulty part or parts and damage done by reason of same, during the period of two years from the date of final acceptance of the installation.

Should the Contractor fail to make good the defective parts within a period of 30 days of such notification, after written notice has been given him, the City may replace these parts, charging the expense of same to the Contractor. (See GC 5-09 and GC 5-10).

7-20 LIMITATIONS: Nothing contained in Sections 5-10, 7-17, 7-18, or 7-19 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under or by virtue of the Contract Documents, expressed or implied. The establishment of a time period of two (2) years to correct faulty work after the date of final acceptance of the installation or such longer period of time as may be prescribed by law or by the terms of any warranty required in the Contract Documents has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations under the Contract Documents.