

CONSTRUCTION SPECIFICATION

August 25, 2010

Project Number: OT-0806-B/RE-BID

Bid Number: 10-32DS

Bid Opening Date: September 14, 2010 @ 2:00 p.m. CST

Fire Hall Improvements:

Bituminous Paving

Fire Hall #1

602 West Second Street

Fire Hall #4

425 West College Street

Fire Hall #7

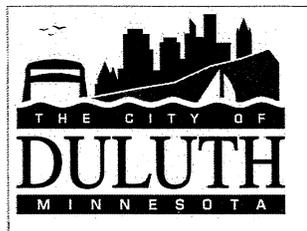
1419 West Maple Grove Road

ARCHITECT: **CITY ARCHITECT'S OFFICE**

1532 West Michigan Street

Duluth, Minnesota 55806

(218)730-5730



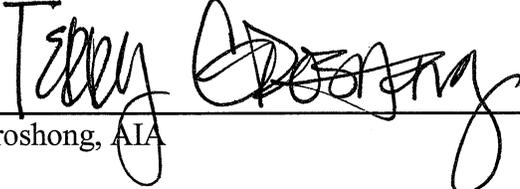
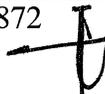
Project Name: Fire Hall Improvements: Bituminous Paving
Fire Hall #1, 602 West Second Street
Fire Hall #4, 425 West College Street
Fire Hall #7, 1419 West Maple Grove Road

PROJECT NUMBER: OT-0806-B/RE-BID

BID NUMBER: 10-32DS

Date: August 25, 2010

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED ARCHITECT UNDER THE LAWS OF THE STATE OF MINNESOTA.

Name		Registration Number	15872
Terry L. Groshong, AIA		15872	

ARCHITECT: City of Duluth
1532 West Michigan Street
Duluth, Minnesota 55806
(218)730-5730

PROJECT IDENTIFICATION & CERTIFICATION
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TECHNICAL SPECIFICATIONS

DIVISION 1: GENERAL CONDITIONS

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 01340 Shop Drawings, Product Data & Samples
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DRAWINGS:

A1 Site Plan for Paving Fire Halls #1, #4, and #7

CITY OF DULUTH

INVITATION TO BID

PROJECT NAME/DESCRIPTION: Fire Hall Improvements: Bituminous Paving
Fire Hall #1, 602 West Second Street
Fire Hall #4, 425 West College Street
Fire Hall #7, 1419 West Maple Grove Road
Duluth, Minnesota

PROJECT NUMBER: OT-0806-B/Re-Bid

BID NUMBER 10-32DS

Sealed bids will be received by the City Purchasing Agent in and for the Corporation of the City of Duluth, Minnesota at our office Suite 100 City Hall, Duluth, Minnesota 55802, (218) 730-5340 at 2:00 P.M., local time on September 14, 2010, for Fire Hall Improvements: Bituminous Paving, Fire Hall #1, #4, and #7, Duluth, Minnesota. Immediately thereafter, bids will be taken to Room 106A City Hall where they will be publicly opened and read aloud.

This advertisement is also available on the City of Duluth website at <http://www.duluthmn.us/city/services/purchasing/bidinfo.html>.

In general, this project consists of bituminous paving at Fire Hall #1, Fire Hall #4 and Fire Hall #7.

Proposal forms, contract documents, plans and specifications as prepared by the City Architect are on file at the following offices: City Purchasing Office; City Architect's Office; Duluth Builder's Exchange; F. W. Dodge Plan Room, Minneapolis Builder's Exchange, Reed Construction Date, St. Paul Builder's Exchange, and MEDA Minority Contractors – AGC of MN Plan Room.

Copies of these plans and specifications may be obtained from PURCHASING, Suite 100 City Hall, Duluth, Minnesota 55802, (218) 730-5340. Copies of bidding documents may be obtained by bidders with a deposit of twenty five dollars (\$25.00) for each set. **This deposit will be refunded if plans are returned within 14 days of bid opening in usable condition.**

A certified check or bank draft payable to the order of the City of Duluth, negotiable U.S. Government Bonds (at par value), or a satisfactory bid bond executed by the bidder and acceptable surety, in an amount equal to five percent (5%) of the total bid, shall be submitted with each bid.

Attention is called to the fact that not less than the minimum salaries, wages and benefits as set forth in the contract documents must be paid on this project. The contractor must take affirmative action to ensure that the employees and applicants for employment are not discriminated against because of their race, color, creed, sex or national origin and must meet the affirmative action goals. Contractors are encouraged to subcontract with disadvantage business enterprises when possible.

The City of Duluth reserves the right to reject any or all bids or to waive any informalities in the bidding. Bids may be held by the City of Duluth for a period not to exceed thirty (30) days from the date of opening the bids for the purpose of reviewing the bids and investigating the qualifications of the bidders, prior to awarding the contract.

The City of Duluth is an Equal Opportunity Employer. Contractor shall comply with all applicable Equal Employment Opportunity laws and regulations.

CITY OF DULUTH

Dennis Sears
Purchasing Agent

INSTRUCTIONS TO BIDDERS

1. Use of Separate Bid Forms. These contract documents include a complete set of bidding and contract forms which are for the convenience of bidders and are not to be detached from the contract document, filled out, or executed. **Separate copies of bid forms are furnished for that purpose.**
2. Interpretations or Addenda. No oral interpretation will be made to any bidder as to the meaning of the contract documents or any part thereof. Every request for such an interpretation shall be made in writing to the City of Duluth. Any inquiry received seven or more days prior to the date fixed for opening of bids will be given consideration. Every interpretation made to a bidder will be in the form of an addendum to the contract documents, and when issued, will be on file in the offices of the Purchasing Agent and City Architect at least five days before bids are opened. In addition, all addenda will be mailed to each person holding contract documents, but it shall be the bidder's responsibility to make inquiry as to the addenda issued. All such addenda shall become part of the contract, and all bidders shall be bound by such addenda, whether or not received by the bidders.
3. Inspection of Site. Each bidder should visit the site of the proposed work and fully acquaint himself with the existing conditions there relating to construction and labor, and should fully inform himself as to the facilities involved, the difficulties, and the restrictions attending the performance of the contract. The bidder should thoroughly examine and familiarize himself with the drawings, technical specifications, and all other contract documents. The contractor, by the execution of the contract, shall in no way be relieved of any obligation under it due to his failure to receive or examine any form or legal instrument or to visit the site and acquaint himself with the conditions there existing; and the City of Duluth will be justified in rejecting any claim based on facts regarding which he should have been on notice as a result thereof.
4. Alternative Bids. No alternative bids will be considered unless alternative bids are specifically requested by the technical specifications.
5. Bids.
 - a. All bids must be submitted on forms supplied by the City of Duluth Purchasing Agent and shall be subject to all requirements of the contract documents, including the drawings, and these **Instructions to Bidders**. All bids must be regular in every respect; and no interlineations, excisions, or special conditions shall be made or included in the bid form by the bidder.

- b. Bid documents including the bid and the bid guaranty shall be enclosed in an envelope which shall be sealed and clearly labeled with the project number, if any, name of bidder, and date and time of bid opening, in order to guard against premature opening of the bid. If proposal is mailed, this envelope shall be placed in another envelope which shall be sealed and labeled with project number, if any, name of bidder, and date and time of bid opening -- and addressed to City of Duluth Purchasing Agent, 100 City Hall, Duluth, Minnesota 55802.
- c. The City of Duluth may consider as irregular any bid on which there is an alteration of or departure from the bid form hereto attached, and at its option may reject the same.
- d. If the project is awarded, it will be awarded by the City of Duluth to the lowest responsible bidder assuming that the bids are within funds available based on the lowest base bid and or in combination with selected alternates (if any). The alternates will be accepted in numerical priority order, as shown on the bid form. By the award of the contract, it is assumed that the work will be completed within the time-frame as specified within the contract documents.
- e. Each bidder shall include in his bid the following information:

Principals -- Names
 Social Security Numbers
 Home Addresses, including city, state, & zip code

Firm -- Name
 Treasury Number
 Address
 City, State & Zip Code

Mechanical & Electrical Subcontractors -- Names of firms that will do the mechanical and electrical work and the amounts of the mechanical and electrical sub-bids, if applicable and when (where indicated on Bid Proposal Form).

6. Bid Guaranty.

- a. The bid must be accompanied by a bid guaranty which shall not be less than five percent (5%) of the amount of the bid. At the option of the bidder, the guaranty may be a certified check, bank draft, negotiable U.S. Government bond (at par value), or a bid bond. No bid will be considered unless it is accompanied by the required guaranty. Certified check or bank draft must be made payable to the order of the City of Duluth, Minnesota. Cash deposits will not be accepted. The bid guaranty shall insure the execution of the agreement and the furnishing of the surety bond or bonds by the successful bidder, all as required by the contract documents.

- b. Revised bids submitted before the opening of bids, whether forwarded by mail or telegram, if representing an increase in excess of two percent (2%) of the original bid, must have bid guaranty adjusted accordingly; otherwise, the bid will not be considered.
- c. Certified checks or bank drafts, or the amount thereof, bid bonds, and negotiable U.S. Government bonds of unsuccessful bidders, will be returned as soon as practical after the opening of bids.

7. Collusive Agreements

- a. The successful bidder on each City of Duluth construction project shall be required to execute a City of Duluth non-collusive affidavit to the effect that he has not entered into a collusive agreement with any other person, firm, or corporation in regard to any bid submitted.
- b. Before executing any subcontract, the successful bidder shall submit the name of any proposed subcontractor for prior approval, and an affidavit substantially in the form provided in Section 103 of General Conditions hereof.

8. Unit Prices. The unit price for each of the several items in the proposal of each bidder shall include its prorata share of overhead so that the sum of the products obtained by multiplying the quantity shown for each item by the unit price bid represents the total bid. Any bid not conforming to this requirement may be rejected as informal. The special attention of all bidders is called to this provision; for should conditions make it necessary to revise the quantities, no limit will be fixed for such increased or decreased quantities nor extra compensation allowed, provided the net monetary value of all such additive and subtractive changes in quantities of such items of work (i.e., difference in cost) shall not increase or decrease the original contract price by more than twenty-five percent (25%), except for work not covered in the drawings and technical specifications as provided for in Section 109 hereof.

9. Corrections. Erasures or other changes in the bids must be explained or noted over the signature of the bidder.

10. Time for Receiving Bids.

- a. Bids received prior to the advertised hour of opening will be securely kept, sealed. The officer whose duty it is to open them will decide when the specified time has arrived, and no bid received thereafter will be considered; except that when a bid arrives by mail after the time fixed for opening, but before the reading of all other bids is completed, and it is shown to the satisfaction of the City Purchasing office that the non-arrival on time was

due solely to delay in the mails for which the bidder was not responsible, such bid will be received and considered.

- b. Bidders are cautioned that, while telegraphic modifications of bids may be received as provided above, such modifications, if not explicit and if in any sense subject to misinterpretation, shall make the bid so modified or amended, subject to rejection.
11. Opening of Bids. At the time and place fixed for the opening of bids, the City Purchasing Agent will cause to be opened and publicly read aloud every bid received within the time set for receiving bids, irrespective of any irregularities therein. Bidders and other persons properly interested may be present, in person or by representative.
 12. Withdrawal of Bids. Bids may be withdrawn on written or telegraphic request dispatched by the bidder in time for delivery in the normal course of business to the time fixed for opening; provided, that written confirmation of any telegraphic withdrawal over the signature of the bidder is placed in the mail and postmarked prior to the time set for bid opening. The bid guaranty of any bidder withdrawing his bid in accordance with the foregoing conditions will be returned promptly.
 13. Award of Contract: Rejection of Bids.
 - a. The contract will be awarded to the responsible bidder submitting the lowest bid complying with the conditions of the Invitation to Bid. The City of Duluth, however, reserves the right to reject any and all such bids and to waive any informality in bids received whenever such rejection or waiver is in its interest.
 - b. The City of Duluth reserves the right to consider as unqualified to do the work of general construction, any bidder who does not habitually perform with his own forces the major portions of the work involved in construction of the improvements embraced in the contract documents.
 14. Execution of Agreement: Performance and Payment Bond.
 - a. Subsequent to the award and within ten (10) days after the prescribed forms are presented for signature, the successful bidder shall execute and deliver to the City of Duluth an agreement in the form as furnished by the City, in such number of copies as the City of Duluth may require.
 - b. Having satisfied all conditions of award as set forth elsewhere in these documents, the successful bidder shall, within the period specified in paragraph "a" above, furnish:
 - 1) A performance bond for the use and benefit of the City of Duluth to complete the contract according to its terms, and conditioned on

saving the City of Duluth harmless from all costs and charges that may accrue on account of completing the specified work; and

- 2) A payment bond for the use and benefit of all persons furnishing labor and materials for the performance of the contract conditioned upon the payment, as they become due, of all just claims for labor and materials.

Both the performance bond and the payment bond shall be in a penal sum of not less than the amount of the contract awarded. Such bonds shall be in the same form as that included in the contract documents and shall bear the same date as, or a date subsequent to, that of the agreement. A current power of attorney for the person who signs for any surety company shall be attached to such bonds.

- c. The failure of the successful bidder to execute such agreement to supply the required bond or bonds within ten (10) days after the prescribed forms are presented for signature, or within such extended period as the City of Duluth may grant, based on reasons determined sufficient by the City of Duluth, shall constitute a default, and the City of Duluth may either award the contract to the next lowest responsible bidder or re-advertise for bids, and may charge against the bidder the difference between the amount of the bid and the amount for which a contract for the work is subsequently executed, irrespective of whether the amount thus due exceeds the amount of the bid bond. If a more favorable bid is received by re-advertising, the defaulting bidder shall have no claim against the City of Duluth for a refund.

15. Wages and Salaries.

- a. Attention of bidders is particularly called to the requirements concerning the payment of not less than the prevailing wage and salary rates specified in the contract documents and the conditions of employment with respect to certain categories and classifications of employees.
- b. The rates of pay set forth under **General Conditions** are the minimums to be paid during the life of the contract. It is therefore the responsibility of bidders to inform themselves as to local labor conditions, such as the length of work day and work week, overtime compensations, health and welfare contributions, labor supply, and prospective changes or adjustments of rates.

16. Equal Employment Opportunity. Attention of bidders is particularly called to the requirement for ensuring that employees and applicants for employment are not discriminated against because of their race, color, religion, sex, or national origin. (See Supplementary General Conditions, Part II, Section II).

17. Employment and Business. Attention of bidders is particularly called to the

requirement that, to the greatest extent feasible, opportunities for training and employment made possible by this project shall be given to lower income residents of the City of Duluth. Additionally, efforts should be made, if any work is subcontracted, to award subcontracts to concerns located in or owned in substantial part by persons residing in the City of Duluth.

18. Sales and Use Taxes. It is assumed that, in the preparation of his proposal, the bidder has taken into consideration his liability from any sales, use, or excise tax that might be assessed in the purchase of, storage, use, or consumption of any materials, services, or supplies for performance of the contract work. Any such tax paid by the contractor will be considered as his expense, for which no direct compensation will be made by the City to the contractor over and above the accepted bid.
19. Pre-Bid/Pre-Construction Meetings.
 - a. Seven (7) days prior to bid date, a pre-bid meeting will be held (see **Bid Form** for time and place). All prime bidders are requested to attend. All bidders will be allowed to make inquiries regarding the contract documents. All formal decisions will be documented by addendum. Failure of any prime bidders to attend this meeting could jeopardize the contract award.
 - b. Approximately seven (7) days after City Council approval of contract award, the successful bidder is required to attend a pre-construction meeting. At this meeting, the successful bidder will present his construction schedule, cost breakdown, required submittals, etc.
20. Equal Employment Opportunity (EEO) Affirmative Action Police Statement and Compliance Certificate.
 - a. The successful bidder on each City of Duluth construction project shall be required to execute a certificate substantially in the form herein provided.
 - b. Before executing any subcontract in excess of \$2,500, the successful bidder shall require the subcontractor to execute a form similar in nature to the form herein provided.



REQUEST FOR BID
 Date: September 14, 2010
 Project #: OT-0806-B/Re-Bid
 Bid #: 10-32DS

CITY OF DULUTH

RETURN BY BID OPENING TIME TO:

PURCHASING DIVISION
 100 City Hall
 Duluth, Minnesota 55802

Bituminous Paving
Fire Hall #1, Fire Hall #4, Fire Hall #7,

PHONE: (218)730-5340

FAX: (218)730-5921

BID OPENING AT: 2:00 PM ON SEPTEMBER 14, 2010

NOTE: All bids must be written, signed and transmitted in a sealed envelope, plainly marked with the Subject Matter and Opening Date. The City of Duluth reserves the right to split award where there is substantial savings to the City, waive informalities and to reject any and all bids. Bidder shall state in proposal if Bid price is based on acceptance of total order. Sales Tax is not to be included in the unit price. Bidder shall state freight charges if, the proposal F.O.B. is shipping point, freight not allowed. Low Bid will not be the only consideration for award of Bid. All pages shall be signed or initialed by authorized bidder's representative as indicated at the bottom of the page(s) of the request for bid forms.

RETURN BID IN DUPLICATE WITH DUPLICATE DESCRIPTIVE
 LITERATURE TO THE CITY PURCHASING OFFICE

BID DEPOSIT REQUIREMENTS: 5% of Bid Amount

Deposit shall mean cash, cashier's check, or corporate surety bond payable to or in favor of City of Duluth.

PERFORMANCE and PAYMENT BONDS: Shall be required of the successful bidder. Bonds shall BOTH be in the full amount of the Contract amount.

INSURANCE CERTIFICATE: Shall be required per specified requirements per the attached requirements.

Designated F.O.B. Point:

City Architect

Jobsite(s)

Tax: Federal Excise Exemption

Account Number: 41-74-0056 K

Item Number	Qty	U/OM	Description	Unit Price	Total Price
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{See Additional Page(s)}

FREIGHT CHARGES \$ _____

NAME _____

TOTAL BASE BID \$ _____

ADDR1 _____

TO INCLUDE ANY ADDITIONAL PAGES

ADDR2 _____

PAYMENT TERMS: _____

ADDR3 _____

BY: _____

F.O.B. POINT: _____

(Print)

Title

DELIVERY DATE: _____

(SIGNATURE)

Tele #

The City of Duluth is an Equal Opportunity Employer.

Completion Time:

The undersigned hereby affirms & agrees, if awarded a contract, to begin work immediately upon receipt of Notice to Proceed and to substantially complete the work within the time schedule indicated in the Special Conditions, 60 Calender Days.

Security in the sum of \$ _____ in the form of _____ is submitted herewith in accordance with the Instructions to Bidders, payable without condition to the City of Duluth which is agreed shall be retained as liquidated damages for the delay and extra expense caused the Owner if the undersigned fails to execute the contract and furnish bonds required by the contract documents.

Signed: _____ for

_____ a partnership (or)

_____ a corporation incorporated under the laws of the State of

President: _____ Vice President: _____

Secretary: _____ Treasurer: _____

Address(es): _____

_____, being duly sworn, deposes and says that there are no other persons comprising above company or firm than the above names, and that there are no persons or corporations interested in the forgoing proposals, either as principal or subcontractor, other than the above names; also that the proposals are made without any connection with any person or persons acting in any official capacity whatever for the City of Duluth is directly or indirectly interested therein, or any portion of the profit thereof.

Subscribed and Sworn to before me this _____ day of _____ A.D., _____,

_____ Notary Public.

Stamp/Seal

Initial: _____

Addendum Receipt Acknowledgments:

Addendum #: _____ Dated: _____ (initial)

Addendum #: _____ Dated: _____ (initial)

Addendum #: _____ Dated: _____ (initial)

Please Note! Please disregard the note on page 1 regarding sales tax for this bid. All applicable sales and/or use tax are to be included in the bid pricing. All bids are to be bid F.O.B. jobsite, the blank on page 1 for freight shall be left blank.

City Project Contact: Terry Groshong, AIA - City Architect - (218)730-5730 & (218)723-3560 FAX

Initial: _____

PURCHASE ORDER TERMS AND CONDITIONS

1. **ACCEPTANCE.** ACCEPTANCE OF THIS ORDER BY SELLER IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED IN THIS ORDER. ANY TERM OR CONDITION STATED BY THE SELLER IN ANY PRIOR PROPOSAL, ON SELLER'S ACKNOWLEDGEMENT FORM, OR IN OTHERWISE ACKNOWLEDGING OR ACCEPTING THIS ORDER IS DEEMED BY BUYER TO BE A MATERIAL ALTERATION OF THIS ORDER AND IS HEREBY OBJECTED TO BY BUYER. ANY SUCH TERM OR CONDITION SHALL BE TOTALLY INAPPLICABLE TO THIS ORDER UNLESS SPECIFICALLY AGREED TO IN A WRITING SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BUYER. ACCEPTANCE OF THE GOODS OR SERVICES COVERED BY THIS ORDER WILL NOT CONSTITUTE ACCEPTANCE BY BUYER OF SELLER'S TERMS AND CONDITIONS. ANY OF THE FOLLOWING ACTS BY SELLER SHALL CONSTITUTE ACCEPTANCE OF THIS ORDER AND ALL OF ITS TERMS AND CONDITIONS SIGNING AND RETURNING A COPY OF THIS ORDER; DELIVERY OF ANY OF THE GOODS ORDERED; INFORMING THE BUYER IN ANY MANNER OF COMMENCEMENT OF PERFORMANCE; OR RETURNING SELLER'S OWN FORM OF ACKNOWLEDGEMENT.
2. **PRICE.** If price (either fixed price or hourly rate[s] in case of a time and material order) and/or delivery is not specified by Buyer on the face of this order, Seller shall immediately submit its best price, delivery date and/or schedule which shall be subject to Buyer's approval and acceptance. Seller warrants that the prices and other terms for the articles sold to Buyer under this order are not less favorable than those extended to all other customers for the same or like articles in equal or less quantities. In the event Seller reduces its price for such articles during the term of this order, Seller agrees to reduce the prices hereof accordingly. If this order is on a time and material basis, the following shall apply; price shall be (a) material at Seller's cost, less scrap, without any charge for handling or otherwise, plus (b) time at agreed hourly rate(s). If both engineering work and manufacturing work are involved, separate hourly rates shall be specified for each thereof. No overtime shall be employed in the performance of this order without Buyer's prior consent and unless separate overtime hourly rate(s) have been specified and agreed upon. No substantial portion of the order shall be subcontracted by Seller without Buyer's written consent. Seller shall maintain adequate accounting records in accordance with generally accepted accounting practice to substantiate all costs, which records shall be open to examination by Buyer at all reasonable times.
3. **PACKING AND SHIPPING.** If Goods are to be delivered under this order, the cost and fee negotiated for this order are deemed to include all packaging and/or storage cost. All Goods shall be packaged, marked, and otherwise prepared in accordance with good commercial practices to obtain lowest shipping rates. On containers, Seller shall mark handling and loading instructions, shipping information, order number, item and account number, shipment date, and names and addresses of Seller and Buyer. An itemized packing list shall accompany each shipment. Overshipments shall be returned to Seller at Seller's risk and expense. Early shipments may, at option of Buyer, be returned to Seller at Seller's risk and expense or may be retained by Buyer and Buyer shall not be liable for payment until the time originally scheduled hereon.
4. **F.O.B. AND RISK OF LOSS.** Unless otherwise specified on the face of this order, the F.O.B. point shall be Buyer's location designated on the face of this order. If transportation is F.O.B. Seller's location, Seller shall bear all risk of loss or damage to the Goods until delivery of the Goods to the carrier. If transportation is F.O.B. Buyer's location, Seller shall bear all risk of loss or damage to the Goods until delivery of the Goods to Buyer's location.
5. **INVOICING.** All invoices shall be rendered in duplicate unless otherwise specified and shall be rendered within 24 hours after each shipment. Taxes, freight and similar charges shall be shown separately. Each invoice shall be accompanied by bill of lading or express receipt. Payments shall be subject to adjustment for errors, shortages, rejections and other causes. Discount period, if any, shall commence on the date invoice is received or goods are received, whichever is later. Buyer secures blanket coverage on all inbound freight. Invoice charges for additional insurance will not be honored unless otherwise specified.
6. **INSPECTION.** All material and workmanship shall be subject to inspection and test by Buyer, both at plant of Seller and of Buyer. Payment shall be subject to final inspection at Buyer's plant. Buyer shall have the right to reject all goods not conforming to specifications or containing defective material or workmanship. Rejected goods shall be returned at Seller's expense and risk, including transportation both ways, promptly after notification of rejection. Buyer may elect to retain defective goods and to remedy defects and deduct cost of remedying same from amount due Seller. Seller warrants that goods shall be produced under a quality control system that provides at a minimum for the prevention and ready detection of discrepancies and for timely and positive corrective action. Seller warrants that he has or is able to obtain the best facilities necessary to meet the technical and regulatory requirements specified. Seller warrants that quality control records are maintained on file for a minimum of one year from date of shipment or as otherwise specified by contract. Buyer reserves the right, upon 72 hours notice, to audit the Seller's facilities and inspection records in connection with this order.
7. **WARRANTY.** In addition and without prejudice to all other warranties expressed or implied by law, Seller warrants that all material or goods covered by this order shall conform to drawings, specifications and other defects. All warranties, both expressed and implied, also constitute conditions and shall survive inspection, acceptance and payment and shall inure to the benefit of Buyer and its customers. Without limitation of any rights by reason of any breach of warranty or otherwise, material or goods which are not as warranted may at any time be returned to Seller at Seller's expense for credit, correction or replacement as Buyer may direct.
8. **COMPLIANCE WITH LAWS.** Seller shall comply with all federal, state, and local laws, ordinances, rules and regulations in the manufacture and sale of the Goods and performance of the Services, including but not limited to the Occupational Safety and Health Act, the Truth in Negotiation Act, the Resources Conservation and Recovery Act and all applicable requirements of the Fair Labor Standards Act. Seller will defend and hold Buyer harmless from any loss, damages, or costs arising from or caused in any way by any actual or alleged violation of any federal, state, or local law, condition, rule, or regulation, or failure by the Seller to (i) have any chemical substances sold hereunder included in the list of approved chemical substances published by the Environmental Protection Agency pursuant to the Toxic Substances Control Act or (ii) provide a completed Material Safety Data Sheet (OSHA Form 20 equivalent) for any chemical substances sold hereunder as required by any federal, state or local law, ordinance, rule or regulation.
9. **CHANGES.** Buyer may, at any time by written order, make changes in drawings, designs, specifications, method of shipment or packing, time or place of delivery, require additional work, or direct the omission of work covered by this order. If any such change causes an increase or decrease in the price under this order, or in the time required for performance, an equitable adjustment shall be made and this order shall be modified in writing accordingly. Any claim for adjustment under this provision must be asserted within 10 days from date this change is ordered and the amount of such claim must be stated in writing within 30 days thereafter.
10. **BUYER'S PROPERTY, MATERIALS, AND EQUIPMENT.** If Buyer furnishes Seller material or "equipment" ("Equipment" is defined as special dies, molds, jigs, tools, gages, test equipment, masks, etc), or pays for such material or "equipment", title thereto shall remain or vest in Buyer, and Seller shall identify, maintain and preserve such material and "equipment" and shall dispose of it (including scrap) in accordance with Buyer's direction. Such material and "equipment", and whenever practical such individual item thereof shall be plainly marked or otherwise adequately identified by Seller as "property of the City of Duluth" and shall be safely stored separate and apart from Seller's property. Seller shall not substitute any property for Buyer's property. Unless otherwise authorized in writing by Buyer, Seller shall use such material or "equipment" only in the performance of purchase orders for Buyer. Seller shall be responsible for any loss, damage, or destruction to such material or "equipment" but Seller shall not include any insurance costs therefore in the cost charged under this order. Also, the "equipment" required to produce the supplies under this order is for the exclusive use of the City of Duluth and is subject to recall upon written notice.
11. **ASSIGNMENT.** Seller shall not assign this order or any rights under this order without the prior written consent of Buyer, and no purported assignment by Seller shall be binding on Buyer without such written consent.
12. **NOTICE OF LABOR DISPUTES.** Whenever an actual or potential labor dispute delays, or threatens to delay, the timely performance of this order, Seller shall immediately notify Buyer in writing of all relevant information with respect to such dispute.
13. **TERMINATION.** (a) Termination Without Cause. Buyer shall have the right, without cause, at any time to terminate all or any part of the undelivered portion of this order by written notice. If Seller has and desires to assert any claim on account of any such termination, Seller shall submit its termination claims to Buyer, in form and with evidence satisfactory to Buyer, promptly, but no later than 90 days after the effective date of the termination. If Seller fails to submit a termination claim within that time, Buyer shall have no liability to Seller on account of the termination. If Seller's termination claim is not acceptable to Buyer and cannot be settled by negotiation, the claim shall be submitted to arbitration. (b) Termination With Cause. If Seller fails to make any delivery in accordance with the agreed delivery date or schedule or terms or conditions applicable to this order, Buyer shall have the right (in addition to any other right or remedy at law or under this agreement) by written notice to terminate all or any part of the undelivered portion of this order without any liability to Seller on account thereof, in the articles elsewhere on such terms and in such manner as Buyer may deem appropriate and Seller shall be liable to Buyer for all excess costs occasioned Buyer thereby.
14. **PATENTS AND COPYRIGHTS.** Seller shall defend, at its own expense, any suit or claim that may be instituted against Buyer or any customer of Buyer for alleged infringement of patents or copyrights relating to the maintenance, sale, or use of the Goods, except for any such infringement resulting from Seller's compliance with detailed designs provided by Buyer, and Seller shall indemnify Buyer and its customers for all costs and damages arising out of such alleged infringement. Buyer shall have the right, at no additional charge, to use and/or reproduce the Seller's applicable literature, such as operating and maintenance manuals, technical publications, prints, drawings, training manuals, and other similar supporting documentation and sales literature. Seller shall advise Buyer of any updated information relative to the foregoing literature and documentation with timely notification in writing.
15. **PUBLIC LIABILITY INSURANCE.** Seller shall hold Buyer and its customer harmless from all injuries, damages and claims arising from performance of work or services covered by this order. Seller shall maintain such insurance as will protect the Seller, the Buyer and his customer from claims under Worker's Compensation Acts and from all other claims for damages, personal injury, or death to employees of the Seller, the Buyer or his Customer, or any other persons which may arise from performance of work or services covered by this order whether performed by the Seller or any Subcontractor or any one directly or indirectly employed by either of them. Certificates of such insurance shall be filed with the Buyer and shall be subject to Buyer's approval for adequacy of protection.
16. **DELAYS.** Time is of the essence. All actual or potential delays of whatever nature must be reported to the Buyer when and as they occur if the event can be expected to result in a delivery later than that shown on the face of this order. Seller agrees to indemnify Buyer for all losses, costs and damages resulting from Seller's delay or failure to deliver.
17. **GENERAL.** This order is formed under and shall be interpreted according to, and governed by, Minnesota law. No waiver by Buyer of any of its rights or remedies hereunder shall be construed as a waiver of any other rights or remedies.



CITY OF DULUTH

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That we _____
(hereinafter called the "Contractor") located at _____
(contractor's address)

_____ and _____ (a
corporation holding a certificate of the Insurance Commissioner of the State
of Minnesota showing that it is authorized to contract as a surety,
hereinafter called the "Surety") located at _____
(surety's address)

_____ are held and firmly bound unto the City of Duluth
(hereinafter called the "Owner"), in the penal sum of
_____ Dollars (\$_____) for the
payment of which we bind ourselves, our heirs, executors and administrators,
successors and assigns, for the faithful performance of a written contract
for the purpose of _____

_____ according to plans, profiles and specifications thereto annexed. A copy of
that contract is incorporated herein by reference and is made a part hereof
as if fully copied herein.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH,
That,

A. If the Contractor shall in all respects comply with the terms and
conditions of the Contract (which includes the contract documents) and such
alterations as may be made in said contract as documents therein provide for,
and shall complete the contract in accordance with its terms,

B. If the Contractor shall indemnify, defend and save harmless the
owner from all costs, expenses, damages, injury or conduct, want or care or
skill, negligence or default, including patent infringement on the part of
the Contractor, agents or employees, in the execution or performance of the
contract,

C. If the Contractor shall indemnify the owner for all costs that may
accrue on account of the enforcing of the terms of the bond, if action is
brought on the bond, including reasonable attorney's fees, in any case where

such action is successfully maintained,

D. If the Contractor shall comply with all laws pertaining to doing the work under the contract,

Then this obligation shall be void; the Contractor and Surety jointly and severally agree to pay to the Owner any difference between the sum to which the Contractor will be entitled on the completion of the contract and that which the Owner may be obliged to pay for the completion of the work by contract or otherwise, and any damages, direct or indirect, or consequential, which the Owner may sustain on account of the work, or on account of the failure of the Contractor to properly and in all things, keep and execute all of the provisions of the Contract. And the said Contractor and Surety

hereby further bind themselves, their successors, executors, administrators and assigns, jointly and severally, that they will employ and fully protect the said Owner against and will pay any and all amounts, damages, costs and judgements which may be recovered against or which the Owner may be called upon to pay to any person or corporation by reason of any damage arising from the performance of said work, repair or maintenance thereof, or the manner of doing the same, or the neglect of the said Contractor or his agents or servants, or the improper performance of the said work by the Contractor or his agents or servants, or the infringements of any patent rights by reason of the use of any material furnished or work done, as aforesaid, or otherwise. For the purpose of this paragraph a subcontractor shall be deemed to be the agent or employee of the Contractor to the extent of his subcontract.

The Contractor and the Sureties do hereby expressly waive any objection that might be interposed as to the right of the Owner to require a bond containing the foregoing provisions, and they do hereby further expressly waive any defense which they or either and any of them might interpose to an action brought hereon by any person, firm, or corporation, including subcontractors, materialmen and third persons, for work, labor, services, supplies or material performed, rendered or furnished as aforesaid, upon the ground that there is no law authorizing the Owner to require the foregoing provisions to be placed in this bond.

And the Surety, for value received, hereby stipulates and agrees that the obligations of the Surety and this bond shall in no way be impaired or affected by any extension of time, modification, omission, addition or change in or to the contract or the work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provision thereof, or by any assignment, subletting or other transfer

thereof, or of any part thereof, or of any work to be performed, or of any moneys due or to become due thereunder; and the said Surety does hereby waive notice of any and all such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and hereby stipulates and agrees that any and all things done and omitted to be done by and in relation to executors, administrators, successors, assignees, subcontractors and other transferees, shall have the same effect as to said Surety as though done or omitted to be done by and in relation to the Contractor.

Signed this _____ day of _____, 20____.

Name of Principal

By

Name of Surety

By _____
Attorney-in-Fact

ACKNOWLEDGEMENTS

State of Minnesota)
) ss. Principal - Individual
County of St. Louis)

This instrument was acknowledged before me on _____
by _____.

Notary Seal

Notary Public

State of Minnesota)
) ss. Principal - Corporate or Partnership
County of St. Louis)

This instrument was acknowledged before me on

by _____ as

of _____.

Notary Seal

Notary Public

State of Minnesota)
) ss. Surety
County of St. Louis)

Be It Known, That on this _____ day of
_____ A.D.
20_____, came before me personally
_____, to me personally
known,
who being by me duly sworn, did say that he is the

of

the above named corporation which executed the foregoing bond as surety; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was executed in behalf of said corporation, by authority of its Board of Directors; that said corporation hold a certificate of the Insurance Commissioner of the State of Minnesota showing that it is authorized to contract as a surety; and said

_____ acknowledged said instrument to be the free act and deed of said corporation.

Notary Seal

Notary Public

APPROVED AS TO FORM, CORRECTNESS AND VALIDITY HEREOF

Dated this _____ day of _____ day of _____, 20____
20_____

Dated this _____ day of _____, 20____

Assistant City Attorney, Duluth, MN

Finance Director, Duluth, MN



CITY OF DULUTH

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That we _____
(hereinafter called the "Contractor") located at _____
(contractor's address)

_____ and _____
(a corporation holding a certificate of the Insurance Commissioner of the
State of Minnesota showing that it is authorized to contract as a surety,
hereinafter called the "Surety") located at _____
(surety's address)

_____ are held and firmly bound unto the City of Duluth
(hereinafter called the "Owner"), for the benefit of persons furnishing labor
and materials for the contract set forth below, in the penal sum of _____
Dollars (\$ _____) for the payment
of which we bind ourselves, our heirs, executors and administrators,
successors and assigns, for the payment of all labor and materials supplied
by any person in the performance of a written contract for the purpose of

_____ according to plans, profiles and specifications thereto annexed. A copy of
that contract is incorporated herein by reference and is made a part hereof
as if fully copied herein.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH,
That,

A. If the Contractor shall make payments, as they may become due, to
all persons supplying "labor and materials", as defined in Minnesota Statutes
Section 574.26, used directly or indirectly by the Contractor, or his
Subcontractor, in the prosecution of the work provided for in the contract,

B. If the Contractor shall indemnify the owner or other claimant for
all costs that may accrue on account of the enforcing of the terms of the
bond, if action is brought on the bond, including reasonable attorney's fees,
in any case where such action is successfully maintained,

Then this obligation shall be void; otherwise it shall remain in full
force and effect.

And the said Contractor and Surety agree that in accordance with
Minnesota Statutes Section 574.26 not only said City but any person
furnishing "labor and materials", as defined in Minnesota Statutes 574.26,
may sue on this bond for their use on account of any sums due them for
anything so furnished.

The Contractor and the Sureties do hereby expressly waive any objection
that might be interposed as to the right of the Owner to require a bond
containing the foregoing provisions, and they do hereby further expressly
waive any defense which they or either and any of them might interpose to an
action brought hereon by any person, firm, or corporation, including

subcontractors, materialmen and third persons, for work, labor, services, supplies or material performed, rendered or furnished as aforesaid, upon the ground that there is no law authorizing the Owner to require the foregoing provisions to be placed in this bond.

And the Surety, for value received, hereby stipulates and agrees that the obligations of the Surety and this bond shall in no way be impaired or affected by any extension of time, modification, omission, addition or change in or to the contract or the work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provision thereof, or by any assignment, subletting or other transfer thereof, or of any part thereof, or of any work to be performed, or of any moneys due or to become due thereunder; and the said Surety does hereby waive notice of any and all such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and hereby stipulates and agrees that any and all things done and omitted to be done by and in relation to executors, administrators, successors, assignees, subcontractors and other transferees, shall have the same effect as to said Surety as though done or omitted to be done by and in relation to the Contractor.

Signed this _____ day of _____, 20____.

Name of Principal

By

Name of Surety

By _____
Attorney-in-Fact

ACKNOWLEDGEMENTS

State of Minnesota)
) ss. Principal - Individual
County of St. Louis)

This instrument was acknowledged before me on _____
by _____.

Notary Seal

Notary Public

State of Minnesota)
) ss. Principal - Corporate or Partnership
County of St. Louis)

This instrument was acknowledged before me on
_____ by _____ as
_____ of _____.

Notary Seal

Notary Public

State of Minnesota)
) ss. Surety
County of St. Louis)

Be It Known, That on this _____ day of
_____ A.D.
20_____, came before me personally
_____, to me personally
known,
who being by me duly sworn, did say that he is the
_____ of

the above named corporation which executed the foregoing bond as surety; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was executed in behalf of said corporation, by authority of its Board of Directors; that said corporation hold a certificate of the Insurance Commissioner of the State of Minnesota showing that it is authorized to contract as a surety; and said

_____ acknowledged said instrument to be the free act and deed of said corporation.

Notary Seal

Notary Public

APPROVED AS TO FORM, CORRECTNESS AND VALIDITY HEREOF

Dated this _____ day of _____
_____ day of _____,
20 _____

Dated _____ this _____,

Assistant City Attorney, Duluth, MN
MN

Finance Director, Duluth,



CITY OF DULUTH

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That we _____

(hereinafter called the "Contractor") located at _____
(contractor's address)
_____ and _____

(a corporation holding a certificate of the Insurance Commissioner of the State of Minnesota showing that it is authorized to contract as a surety, hereinafter called the "Surety") located at _____
(surety's address)

_____ are held and firmly bound unto the City of Duluth (hereinafter called the "Owner"), for the benefit of persons furnishing labor and materials for the contract set forth below, in the penal sum of _____ Dollars (\$ _____) for the payment of which we bind ourselves, our heirs, executors and administrators, successors and assigns, for the payment of all labor and materials supplied by any person in the performance of a written contract for the purpose of

_____ according to plans, profiles and specifications thereto annexed. A copy of that contract is incorporated herein by reference and is made a part hereof as if fully copied herein.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH, That,

A. If the Contractor shall make payments, as they may become due, to all persons supplying "labor and materials", as defined in Minnesota Statutes Section 574.26, used directly or indirectly by the Contractor, or his Subcontractor, in the prosecution of the work provided for in the contract,

B. If the Contractor shall indemnify the owner or other claimant for all costs that may accrue on account of the enforcing of the terms of the bond, if action is brought on the bond, including reasonable attorney's fees, in any case where such action is successfully maintained,

Then this obligation shall be void; otherwise it shall remain in full force and effect.

And the said Contractor and Surety agree that in accordance with Minnesota Statutes Section 574.26 not only said City but any person furnishing "labor and materials", as defined in Minnesota Statutes 574.26,

may sue on this bond for their use on account of any sums due them for anything so furnished.

The Contractor and the Sureties do hereby expressly waive any objection that might be interposed as to the right of the Owner to require a bond containing the foregoing provisions, and they do hereby further expressly waive any defense which they or either and any of them might interpose to an action brought hereon by any person, firm, or corporation, including subcontractors, materialmen and third persons, for work, labor, services, supplies or material performed, rendered or furnished as aforesaid, upon the ground that there is no law authorizing the Owner to require the foregoing provisions to be placed in this bond.

And the Surety, for value received, hereby stipulates and agrees that the obligations of the Surety and this bond shall in no way be impaired or affected by any extension of time, modification, omission, addition or change in or to the contract or the work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provision thereof, or by any assignment, subletting or other transfer thereof, or of any part thereof, or of any work to be performed, or of any moneys due or to become due thereunder; and the said Surety does hereby waive notice of any and all such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and hereby stipulates and agrees that any and all things done and omitted to be done by and in relation to executors, administrators, successors, assignees, subcontractors and other transferees, shall have the same effect as to said Surety as though done or omitted to be done by and in relation to the Contractor.

Signed this _____ day of _____, 20____.

Name of Principal

By

Name of Surety

By _____
Attorney-in-Fact

ACKNOWLEDGEMENTS

State of Minnesota)
) ss. Principal - Individual
County of St. Louis)

This instrument was acknowledged before me on _____
by _____.

Notary Seal

Notary Public

State of Minnesota)
) ss. Principal - Corporate or Partnership
County of St. Louis)

This instrument was acknowledged before me on _____
by _____ as

of _____.

Notary Seal

Notary Public

State of Minnesota)
) ss. Surety
County of St. Louis)

Be It Known, That on this _____ day of _____
_____ A.D.
20____, came before me personally

_____, to me personally
known,
who being by me duly sworn, did say that he is the

of

the above named corporation which executed the foregoing bond as surety;
that the seal affixed to the foregoing instrument is the corporate seal of
said corporation; that said instrument was executed in behalf of said
corporation, by authority of its Board of Directors; that said corporation
hold a certificate of the Insurance Commissioner of the State of Minnesota

showing that it is authorized to contract as a surety; and said

_____ acknowledged said instrument to be the free act and deed of said corporation.

Notary Seal

Notary Public

APPROVED AS TO FORM, CORRECTNESS AND VALIDITY HEREOF

Dated this _____ day of _____ day of _____ (month), 2006

Dated this _____ (month) _____ th), 2006

Assistant City Attorney, Duluth, MN

Finance Director, Duluth, MN

AFFIDAVIT AND INFORMATION REQUIRED OF BIDDERS

Affidavit of Non-Collusion:

I hereby swear (or affirm) under the penalty of perjury:

1. That I am the bidder (if the bidder is an individual), a partner in the bidder (if the bidder is a partnership), or an officer or employee of the bidding corporation having authority to sign on its behalf (if the bidder is a corporation);

2. That the attached bid or bids have been arrived at by the bidder independently, and have been submitted without collusion with, and without agreement, understanding, or planned common course of action with, any other vendor for materials, supplies, equipment or services described in the invitation to bid, designed to limit independent bidding or competition;

3. That the contents of the bid or bids have not been communicated by the bidder or its employees or agents to any person not an employee or agent of the bidder or its surety on any bond furnished with the bid or bids, and will not be communicated to any such person prior to the official opening of the bid or bids; and

4. That I have fully informed myself regarding the accuracy of the statements made in this affidavit.

Signed: _____

Firm Name: _____

Subscribed and sworn to before me this _____ day of _____, 20____.

NOTARY PUBLIC _____

My commission expires:

Bidder's E.I. Number _____
(Number used on employer's quarterly Federal tax return)

EQUAL EMPLOYMENT OPPORTUNITY (EEO) AFFIRMATIVE
ACTION POLICY STATEMENT & COMPLIANCE CERTIFICATE

TO: City of Duluth, Minnesota PROJECT:

FROM:

(FIRM'S Name, Address, Telephone Number)

- A. Employment: It is the policy of the above named FIRM to afford equal opportunity for employment to all individuals regardless of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, and/or disability. The FIRM will take affirmative action to ensure that we will, (1) recruit, hire and promote all job classifications without regard to race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, and/or disability, except where sex is a bona fide occupational qualification; (2) base decisions on employment so as to further the principle of equal employment opportunity; (3) ensure that promotion decisions are in accord with the principles of equal employment opportunity by imposing only valid requirements for promotional opportunities; (4) ensure that all personnel actions such as compensation, benefits, transfers, layoffs, return from layoff, FIRM sponsored training, education tuition assistance, social and recreational programs will be administered without regard to race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, and/or disability. The FIRM also intends full compliance with Veteran affirmative action requirements. Additionally minority and female employees shall be encouraged to participate in all FIRM activities and refer applicants.

I have designated (name) _____ to direct the establishment of and to monitor the implementation of personnel procedures to guide the FIRM's affirmative action program. Where PROJECTS exceed \$500,000, this official shall also serve as the liaison officer that administers the FIRM's "Minority Business Enterprise Program." This official is charged with designing and implementing audit and reporting systems that will keep management informed on a monthly basis of the status of the equal opportunity area.

Supervisors have been made to understand that their work performance is being evaluated on the basis of their equal opportunity efforts and results, as well as other criteria. It shall be the responsibility of the FIRM and its supervisors to take actions to prevent harassment of employees placed through affirmative action efforts.

- B. Reports: Unless exempted by law and regulation, the FIRM shall make available and file those reports related to equal opportunity as may be required by the City of Duluth and State and Federal compliance agencies. Requirements and Reports are defined in 41CFR60 "Compliance Responsibility for Equal Opportunity" published by the U.S. Department of Labor which is incorporated herein by reference. Additional requirements are defined in the various State and Federal Civil Rights Legislation and Rules promulgated thereunder.

- C. **Nonsegregated Facilities:** The FIRM certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The FIRM certifies that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The FIRM agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this certificate. As used in this Certification, the term "segregated facilities" means any waiting rooms, work area, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation for entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom or otherwise.
- D. **Affirmative Action Compliance Program:** Unless exempted by regulation and law, the FIRM if the FIRM has 50 or more employees and if the value of current contracts with the City of Duluth exceeds \$50,000 shall prepare and maintain a written affirmative action compliance program that meets the requirements as set forth in 41CFR60.
- E. **Non-compliance:** The FIRM certifies that it is not currently in receipt of any outstanding letters of deficiencies, show cause, probable cause, or other such notification of non-compliance with EEO Laws and Regulations.
- F. **Employment Goals - "Construction" Projects:** It shall be the goal of the FIRM if the PROJECT is of a construction nature that in all on-site employment generated that no less than 3% of the on-site workforce will be minority employees and that no less than 7% of the on-site workforce will be female employees. Further, it is the goal of the FIRM if the PROJECT is of a construction nature that in all on-site employment generated that no less than 3% of the work hours generated shall be worked by minority employees and that no less than 7% of the work hours generated shall be worked by female employees.
- G. **Subcontractors:** The FIRM will for all its PROJECT subcontractors regardless of tier (unless exempted by law and regulation) that participate in the PROJECT to the extent that said subcontractor will receive in excess of \$2,500 will require that; (1) the subcontractor shall execute an "EEO Statement and Certification" similar in nature to this "Statement and Certification" (2) said documentation to be maintained on file with the FIRM or subcontractor as may be appropriate.

Executed this day _____ 19 _____

by:

(printed Name & Title)

(Signature)

NOTE: In addition to the various remedies prescribed for violation of Equal Opportunity Laws the penalty for making false statements is prescribed in 18 U.S.C. 1001.

Withholding Affidavit for Contractors

IC-134

This affidavit must be approved by the Minnesota Department of Revenue before the state of Minnesota or any of its subdivisions can make final payment to contractors.

Please type or print clearly. This will be your mailing label for returning the completed form.

GENERAL CONDITIONS

PART I

101. DEFINITIONS

Wherever used in any of the Contract Documents, the following meanings shall be given to the terms herein defined:

- a. The term "Contract" means the Contract executed by the City of Duluth in its capacity as agent for the City of Duluth and the Contractor, of which these GENERAL CONDITIONS form a part.
- b. The term "City" means the City of Duluth, Minnesota, which is authorized to undertake this Contract and within which the Project Area is situated or any employee of the City of Duluth designated by the City of Duluth for the purpose of inspecting, directing, or having in charge the work embraced in this Contract.
- c. The term "Contractor" means the person, firm, or corporation entering into the Contract with the City to construct and install the Improvements embraced in this Contract.
- d. The term "Project Area" means site within which is specified Contract limits of the Improvements contemplated to be constructed in whole or in part under this Contract.
- e. The term "Architect" means the architect or engineer licensed to practice architecture or engineering and serving the City with architectural or engineering services, or his authorized representative or successor.
- f. The term "Change Order" means a written order to the Contractor, signed by the City, issued after execution of the Contract, authorizing and directing a change in the Work or an adjustment in the contract sum or the contract time. The contract sum and the contract time may be changed only by Change Order.
- g. The term "Contract Documents" means and shall include the following: Executed Agreement, Addenda (if any), Invitation for Bids, Instructions to Bidders, Signed Copy of Bid, General Conditions, Special Conditions, Technical Specifications, and Drawings (as listed in the Schedule of Drawings), and all requested submittals such as Certificate of Insurance, performance and payment bonds, EEO Affirmative Action Policy Statement & Compliance Certificate, Certificate of Non-Collusion.
- h. The term "Drawings" means the drawings listed in the Schedule of Drawings.
- i. The term "Field Order" means a written interpretation necessary for the proper execution of the Work, in the form of drawings or otherwise issued to the Contractor by the City or the Architect.
- j. The term "Technical Specifications" means that part of the Contract Documents which describes, outlines and stipulates the quality of the materials to be furnished, the quality of workmanship required, and the methods to be used in carrying out the construction work to be performed under this Contract.

- k. The term "Addenda" or "Addendum" means any changes, revisions or clarifications of the Contract Documents which have been duly issued by the City to prospective Bidders prior to time of receiving Bids.
- l. The term "Work" means all labor necessary to produce the construction required by the Contract Documents, and all materials and equipment incorporated in such construction.

102. SUPERINTENDENCE BY CONTRACTOR

- a. Except where the Contractor is an individual and gives his personal superintendence to the work, the Contractor shall provide a competent superintendent, satisfactory to the City and the Architect, on the work at all times during working hours with full authority to act for him. The Contractor shall also provide an adequate staff for the proper coordination and expediting of his work.
- b. The Contractor shall lay out his own work and he shall be responsible for all work executed by him under the Contract. He shall verify all figures and elevations before proceeding with the work and will be held responsible for any error resulting from his failure to do so.

103. SUBCONTRACTS

- a. The Contractor shall not execute an agreement with any subcontractor, or permit any subcontractor to perform any work included in this contract until he has submitted a non-collusion affidavit from the subcontractor in substantially the form attached and has received written approval of such subcontractor from the City.
- b. No proposed subcontractor shall be disapproved by the City except for cause.
- c. The Contractor shall be as fully responsible to the Owner for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.
- d. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to require compliance by each subcontractor with the applicable provisions of this Contract.
- e. Nothing contained in this Contract shall create any contractual relationship between the subcontractor and the City.

104. OTHER CONTRACTS

The City may award, or may have awarded, other contracts for additional work, and the Contractor shall cooperate fully with such other Contractors, by scheduling his own work with that to be performed under other Contracts as may be directed by the City. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor as scheduled.

105. FITTING AND COORDINATION OF THE WORK

The Contractor shall be responsible for the proper fitting of all work and for the coordination of the operations of all trades, subcontractors, or materialmen engaged upon this Contract. He shall be

prepared to guarantee to each of his subcontractors the locations and measurements which they may require for the fitting of their work to all surrounding work.

106. MUTUAL RESPONSIBILITY OF CONTRACTORS

If, through acts or neglect on the part of the Contractor, any other Contractor or any subcontractor shall suffer loss or damage on the work, the Contractor shall settle with such other Contractor or subcontractor by agreement or arbitration, if such other Contractor or subcontractor will so settle. If such other Contractor or subcontractor shall assert any claim against the City on account of damage alleged to have been so sustained, the City shall notify this Contractor, who shall defend at his own expense any suit based upon such claim, and, if any judgement or claims against the City shall be allowed, the Contractor shall pay or satisfy such judgement or claim and pay all costs and expenses in connection therewith.

107. PROGRESS SCHEDULE

The Contractor shall submit for approval immediately after execution of the Agreement, a carefully prepared Progress Schedule, showing the proposed dates of starting and of completing each of the various sections of the work, the anticipated monthly payments to become due the Contractor and the accumulated percent of progress each month.

108. PAYMENTS

1. Partial Payments.

- a. The Contractor shall prepare his requisition of partial payment as of the last day of the month and submit it, with the required number of copies, to the City contracting officer for his approval. The amount of the payment due the Contractor shall be determined by adding to the total value of work completed to date, the value of materials properly stored on the site and deducting (1) five percent (5%) of the total amount, this sum to be retained until final payment and (2) the amount of all previous payments. The total value of the work completed to date shall be based on the estimated quantities of work completed and on the unit prices contained in the agreement. The value of materials properly stored on site shall be based upon the estimated quantities of such materials and the invoice prices. Copies of all invoices shall be available for the inspection of the Architect and the City.
- b. Monthly or partial payments made by the City to the Contractor are moneys advanced for the purpose of assisting the Contractor to expedite the work of construction. The Contractor shall be responsible for the care and protection of all materials and work upon which payments have been made until final acceptance of such work and materials by the City. Such payments shall not constitute a waiver of the right of the City to require the fulfillment of all terms of the Contract and the delivery of all improvements embraced in this Contract complete and satisfactory to the City in all details.

2. Final Payment.

- a. After final inspection and acceptance by the Architect and the City of all work under the Contract, the Contractor shall prepare his requisition for final payment which shall be based upon the carefully measured and computed quantity of each item of work at the applicable unit prices stipulated in the Agreement. The total amount of the final payment due the

Contractor under this Contract shall be the amount computed as described above less all previous payments. Final payment to the Contractor shall be made subject to his furnishing the City with a release in satisfactory form of all claims against the City arising under and by virtue of his contract, other than such claims, if any, as may be specifically excepted by the Contractor from the operation of the release as provided under Section 113 hereof.

- b. The City, before paying the final estimate, may require the Contractor to furnish releases or receipts from all subcontractors having performed any work and all persons having supplied materials, equipment (installed on the Project) and services to the Contractor, if the City deems the same necessary in order to protect its interest. The City, however, may if it deems such action advisable make payment in part or in full to the Contractor without requiring the furnishing of such releases or receipts and any payments so made shall in no way impair the obligations of any surety or sureties furnished under this Contract.
- c. Withholding of any amount due the City under Section 403, entitled "Liquidated Damages", under SPECIAL CONDITIONS, shall be deducted from the final payment due the Contractor.

3. Withholding Payments

The City may withhold from any payment otherwise due the Contractor so much as may be necessary to protect the City and if it so elects may also withhold any amounts due from the Contractor to any subcontractors or material dealers, for work performed or material furnished by them. The foregoing provisions shall be construed solely for the benefit of the City and will not require the City to determine or adjust any claims or disputes between the Contractor and his subcontractors or material dealers, or to withhold any moneys for their protection unless the City elects to do so. The failure or refusal of the City to withhold any moneys from the Contractor shall in no wise impair the obligations of any surety or sureties under any bond or bonds furnished under this Contract.

4. Payments Subject to Submission of Certificates.

Each payment to the Contractor by the City shall be made subject to submissions by the Contractor of all written certifications required of him and his subcontractors by Section II, Part II Supplementary General Conditions for Federally Assisted Activities.

109. CHANGES IN THE WORK

- a. The City may make changes in the scope of work required to be performed by the Contractor under the Contract by making additions thereto, or by omitting work therefrom, without invalidating the Contract, and without relieving the Contractor from any of his obligations under the Contract or any guarantee given by him pursuant to the Contract provisions, and without affecting the validity of the guaranty bonds, and without relieving or releasing the surety or sureties of said bonds. All such work shall be executed under the terms of the original Contract unless is expressly provided otherwise.
- b. Except for the purpose of affording protection against any emergency endangering health, life, or property, the Contractor shall make no change in the materials used or in the specified manner of constructing and/or installing the Improvements or supply additional labor, services, or materials beyond that actually required for the execution of the Contract, unless in pursuance of a written order from the City authorizing the Contractor to proceed with the change. No claim for an adjustment of the Contract Price will be valid unless so ordered.

- c. If applicable unit prices are contained in the Agreement (established as a result of either a unit price bid or a Supplement Schedule of Unit Prices), the City shall order the Contractor to proceed with desired changes in the work, the value of such changes to be determined by the measured quantities involved and the applicable unit prices specified in the Contract; provided that, in case of a unit price contract the net value of all changes does not increase or decrease the original total amount shown in the Agreement by more than twenty-five percent (25%) in accordance with Section entitled Unit Prices, under INSTRUCTIONS TO BIDDERS.
- d. If applicable unit prices are not contained in the Agreement or if the total net change increases or decreases the total Contract Price more than twenty-five (25%), the City shall, before ordering the Contractor to proceed with desired changes, request an itemized proposal from him covering the work involved in the change after which the procedure shall be as follows:
 - (1) If the proposal is acceptable, the City will prepare the change order in accordance therewith for acceptance by the Contractor.
 - (2) If the proposal is not acceptable and prompt agreement between the two parties cannot be reached, the City may order the Contractor to proceed with the work on a cost-plus-limited basis; provided that this basis shall not apply to costs incurred by Contractor for any work done by any subcontractor, which work may proceed under the basis set forth in sub-subparagraph (3) below. A cost-plus-limited basis is defined as the net cost of the Contractor's labor, materials, and insurance plus fifteen percent (15%) of said net cost to cover overhead and profit, the total cost not to exceed a specified limit.
 - (3) If the proposal of the Contractor is not acceptable in whole or part because of the proposals of one or more of the subcontractors and prompt agreement between the two parties cannot be reached, the City may order the Contractor to proceed with the work and reimburse Contractor for work done by any subcontractor on the basis of that subcontractor's net cost of labor, materials, and insurance plus twenty percent (20%) of said net cost to cover overhead and profit, the total cost not to exceed a specified limit. Contractor shall supply all data to City which is necessary to determine any such subcontractor's net costs.
- e. Each change order shall include in its final form:
 - (1) A detailed description of the change in the work.
 - (2) The Contractor's proposal (if any) of a confirmed copy thereof.
 - (3) A definite statement as to the resulting change in the Contract price and/or time.
 - (4) The statement that all work involved in the change shall be performed in accordance with the Contract requirements except as modified by the change order.

110. CLAIMS FOR EXTRA COST

- a. If the Contractor claims that any instructions by Drawings or otherwise involve extra cost or extension of time, he shall, within ten (10) days after the receipt of such instructions, and in any event before proceeding to execute the work, submit his protest thereto in writing to the City, stating clearly and in detail the basis of his objections. No such claim will be considered unless so made.

- b. Claims for additional compensation for extra work, due to alleged errors in ground elevations, contour lines, or bench marks, will not be recognized unless accompanied by certified survey data, made prior to the time the original ground was disturbed, clearly showing that errors exist which resulted, or would result, in handling more material, or performing more work, than would be reasonably estimated from the Drawings and maps issued.
- c. Any discrepancies which may be discovered between actual conditions and those represented by the documents shall at once be reported to the City and work shall not proceed, except at the Contractor's risk, until written instructions have been received by him from the City.
- d. If, on the basis of the available evidence, the City determines that an adjustment of the Contract Price and/or time is justifiable, the procedure shall then be as provided in Section 109 hereof.

111. TERMINATION, DELAYS, AND LIQUIDATED DAMAGES

- a. Termination of Contract. If the Contractor refuses or fails to execute the work with such diligence as will insure its completion within the time specified in these Contract Documents, or as modified as provided in these Contract Documents, the City, by written notice to the Contractor, may terminate the Contractor's right to proceed with the work. Upon such termination, the City may take over the work and prosecute the same to completion, by contract or otherwise, and the Contractor and his sureties shall be liable to the City for any additional cost incurred by the City in its completion of the work and they shall also be liable to the City for liquidated damages for any delay in the completion of the work as provided below. If the Contractor's right to proceed is terminated, the City may take possession of and utilize in completing the work such materials, tools, equipment, and plant as may be on the site of the work and necessary therefor.
- b. Liquidated Damages for Delays. If the work is not completed within the time stipulated in Section 7 (Special Conditions) hereof, including any extensions of time for excusable delays as herein provided, the Contractor shall pay to the City as fixed, agreed, and liquidated damages (it being impossible to determine the actual damages occasioned by the delay) for each calendar day of delay, until the work is completed, the amount as set forth in Section 7 (Special Conditions) hereof and the Contractor and his sureties shall be liable to the City for the amount thereof.
- c. Excusable Delays. The right of the Contractor to proceed shall not be terminated nor shall the Contractor be charged with liquidated damages for any delays in the completion of the work due:
 - (1) To any acts of the Government, including controls or restrictions upon or requisitioning of materials, equipment, tools, or labor by reason of war, National Defense, or any other national emergency;
 - (2) To any acts of the City;
 - (3) To causes not reasonably foreseeable by the parties to this Contract at the time of the execution of the Contract which are beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, acts of another Contractor in their performance of some other contract with the City, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and weather of unusual severity such as hurricanes, tornadoes, cyclones, and other extreme weather conditions; and

- (4) To any delay of any subcontractor occasioned by any of the causes specified in subparagraphs (1), (2) and (3) of this paragraph "c".

Provided, however, that the Contractor promptly notify the City in writing within ten (10) days the cause of the delay. Upon receipt of such notification, the City shall ascertain the facts and the cause of the delay. If, upon the basis of facts and the terms of the Contract, the delay is properly excusable, the City shall extend the time for completing the work for a period of time commensurate with the period of excusable delay.

112. ASSIGNMENT OR NOVATION

The Contractor shall not assign or transfer, whether by an assignment or novation, any of its rights, duties, benefits, obligations, liabilities, or responsibilities under this Contract without the written consent of the City; provided, however, that assignments to banks, trust companies, or other financial institutions may be made without the consent of the City. No assignment or novation expressly provides that the assignment of any of the Contractor's rights or benefits under the Contract is subject to a prior lien for labor performed, services rendered, and materials, tools, and equipment supplied for the performance of the work under this Contract in favor of all persons, firms, or corporations rendering such labor or services or supplying such materials, tools, or equipment.

113. DISPUTES

- a. All disputes arising under this Contract or its interpretation, whether involving law or fact or both, or extra work, and all claims for alleged breach of contract shall, within ten (10) days of the first event giving rise to the dispute, be presented by the Contractor to the City for decision. All papers pertaining to claims shall be filed in quadruplicate. Such notice need not detail the amount of the claim but shall state the facts surrounding the claim in sufficient detail to identify the claim together with its character and scope. In the meantime, the Contractor shall proceed with the work as directed by the City. Any claim not presented within the time limit specified within this paragraph shall be deemed to have been waived, except that if the claim is of a continuing character and notice of the claim is not given within ten (10) days of the first event giving rise to it, the claim will be considered only for a period commencing ten (10) days prior to the receipt by the City of notice thereof.
- b. The Contractor shall submit in detail his claim and his proof thereof. Each decision by the City will be in writing and will be mailed to the Contractor by registered or certified mail, return receipt requested, directed to his last known address or actually delivered to Contractor or its managing agent. All interpretations or decisions of the City shall be consistent with the Contract and its intent.
- c. If the Contractor does not agree with any decision of the City, he shall in no case allow the dispute to delay the work but shall notify the City promptly that he is proceeding with the work under protest and he may then accept the matter in question from the final release. If the Contractor does not agree with any decision of the City, he may submit the matter to arbitration no later than thirty (30) days after the date on which the Contractor received the City's decision; provided, however, that the City shall not be required to submit to arbitration without its prior written consent; and if the City does consent to arbitration, then the Contractor shall pay all costs of such arbitration.

114. TECHNICAL SPECIFICATIONS AND DRAWINGS

Anything mentioned in the Technical Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Technical Specifications, shall be of like effect as if shown on or mentioned in both. In case of difference between Drawings and Technical Specifications, the Technical Specifications shall govern. In case of any discrepancy on Drawings or Technical Specifications, the matter shall be immediately submitted to the City, without whose decision, said discrepancy shall not be adjusted by the Contractor, save only at his own risk and expense.

115. SHOP DRAWINGS

- a. All required shop drawings, machinery details, layout drawings, etc. shall be submitted to the Architect or the City, as directed by the City, in two copies for approval sufficiently in advance of requirements to afford ample time for checking, including time for correcting, resubmitting and rechecking if necessary. The Contractor may proceed, only at his own risk, with manufacture or installation of any equipment or work covered by said shop drawings, etc. until they are approved and no claim, by the Contractor, for extension of the Contract time will be granted by reason of his failure in this respect.
- b. Any drawing submitted without the Contractor's stamp of approval will not be considered and will be returned to him for proper resubmission. If any drawings show variations from the requirements of the Contract because of standard shop practice or other reason, the Contractor shall make specific mention of such variation in his letter of transmittal in order that, if acceptable, suitable action may be taken for proper adjustment of contract price and/or time, otherwise the Contractor will not be relieved of the responsibility for executing the work in accordance with the Contract even though the drawings have been approved.
- c. If a shop drawing with the Contractor involves only a minor adjustment in the interest of the City not involving a change in Contract price or time, the Architect may approve the drawing. The approval shall be general, shall not relieve the Contractor from his responsibility for adherence to the Contract or for any error in the drawing and shall contain in substance the following:

"The modification shown on the attached drawing is approved in the interest of the City to effect an improvement for the Project and is ordered with the understanding that it does not involve any change in the Contract price or time; that it is subject generally to all Contract stipulation and covenants; and that it is without prejudice to any and all rights of the City under the Contract and surety bond or bonds."

116. REQUEST FOR SUPPLEMENTARY INFORMATION

It shall be the responsibility of the Contractor to make timely requests of the City for any additional information not already in his possession which should be furnished by the City under the terms of this Contract, and which he will require in the planning and execution of the work. Such requests may be submitted in writing from time to time as the need is approached, but each shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay. Each request shall be in writing, and list the various items and the latest date by which each will be required by the Contractor. The first list shall be submitted within two (2) weeks after Contract award and shall be as complete as possible at that time. The Contractor shall, if requested, furnish

promptly any assistance and information the City may require in responding to these requests of the Contractor. The Contractor shall be fully responsible for any delay in his work or to others arising from his failure to comply fully with the provisions of this Section.

117. MATERIALS AND WORKMANSHIP

- a. Unless otherwise specifically provided for in the Technical Specifications, all workmanship, equipment, materials and articles incorporated in the work shall be new and the best grade of the respective kinds for the purpose. Where equipment, materials, articles or workmanship are referred to in the Technical Specifications as "equal to" any particular standard, the City shall decide the question of equality.
- b. The Contractor shall furnish to the City for approval the manufacturer's detailed specifications for all machinery, mechanical and other special equipment, which he contemplates installing together with full information as to type, performance characteristics, and all other pertinent information as required, and shall likewise submit for approval as required full information concerning all other materials or articles which he proposes to incorporate in the work. (See Section 118 hereof)
- c. Machinery, mechanical and other equipment, materials or articles installed or used without such prior approval shall be at the risk of subsequent rejection.
- d. Materials specified by reference to the number or symbol of a specific standard, such as A.S.T.M. Standard, a Federal Specification or other similar standard, shall comply with requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date of the Invitation for Bids, except as limited to type, class or grade, or modified in such reference. The Standards referred to, except as modified in the Technical Specifications shall have full force and effect as though printed therein.
- e. The City may require the Contractor to dismiss from the work such employee or employees as the City may deem incompetent, or careless, or insubordinate.

118. SAMPLES, CERTIFICATES AND TESTS

- a. The Contractor shall submit all material or equipment samples, certificates, affidavits, etc. as called for in the Contract Documents or required by the Architect, promptly after award of the Contract and acceptance of the Contractor's Bond. No such material or equipment shall be manufactured or delivered to the site, except at the Contractor's own risk, until the required samples or certificates have been approved in writing by the City or the Architect. Any delay in the work caused by late or improper submission of samples or certificates for approval shall not be considered just cause for an extension of the contract time.

Each sample submitted by the Contractor shall carry a label giving the name of the Contractor, the project for which it is intended, and the name of the producer. The accompanying certificate or letter from the Contractor shall state that the sample complies with Contract requirements, shall give the name and brand of the product, its place of origin, the name and address of the producer and all specifications or other detailed information which will assist the Architect or the City in passing upon the acceptability of the sample promptly. It shall also include the statement that all materials or equipment furnished for use in the project will comply with the samples and/or certified statements.

- b. Approval of any materials shall be general only and shall not constitute a waiver of the City's right to demand full compliance with Contract requirements. After actual deliveries, the City or the Architect will have such check tests made as they deem necessary in each instance and may reject materials and equipment and accessories for cause, even though such materials and equipment have been given general approval. If materials, equipment or accessories which fail to meet check tests have been incorporated in the work, the City or the Architect will have the right to cause their removal and replacement by proper materials or to demand and secure such reparation by the Contractor as is equitable.
- c. Except as otherwise specifically stated in the Contract, the costs of sampling and testing will be divided as follows:
 - (1) The Contractor shall furnish without extra cost, including packing and delivery charges, all samples required for testing purposes, except those samples taken on the project by the City or the Architect;
 - (2) The Contractor shall assume all costs of retesting materials which fail to meet Contract requirements;
 - (3) The Contractor shall assume all costs of testing materials offered in substitution for those found deficient; and
 - (4) The City will pay for all other testing expenses.

119. CARE OF WORK

- a. The Contractor shall be responsible for all damages to persons or property that occur as a result of his fault or negligence in connection with the prosecution of the work and shall be responsible for the proper care and protection of all work performed until completion and final acceptance, whether or not the same has been covered in whole or in part by payments made by the City.
- b. In an emergency affecting the safety of life, limb or property, including adjoining property, the Contractor, without special instructions or authorization from the City is authorized to act at his own discretion to prevent such threatened loss or injury, and he shall so act. He shall likewise act if instructed to do so by the City. Any compensation claimed by the Contractor on account of such emergency work will be determined by the City as provided in Section 109 hereof.
- c. The Contractor shall avoid damage as a result of his operations to existing sidewalks, streets, curbs, pavements, utilities (except those which are to be replaced or removed), adjoining property, etc., and he shall at his own expense completely repair any damage thereto caused by his operations.
- d. The Contractor shall shore up, brace, underpin, secure and protect as may be necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be in any way affected by the excavations or other operations connected with the construction of the Improvements embraced in this Contract. The Contractor shall be responsible for the giving of any and all required notices to any adjacent or adjoining property owner or other party before the commencement of any work. The Contractor shall indemnify and save harmless the City from any damages on account of settlements or the loss of lateral support of adjoining property and from all loss or expense and all damages for which the City may become liable in consequence of such injury or damage to adjoining structures and their premises.

120. ACCIDENT PREVENTION

- a. The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of his fault or negligence in connection with the prosecution of the work. The safety provisions of applicable Federal, State and local laws and ordinances and building and construction codes shall be observed and the Contractor shall take or cause to be taken such additional safety and health measures as the City may determine to be reasonably necessary. Machinery, equipment, and all hazards shall be guarded in accordance with the safety provisions of the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America, Inc., to the extent that such provisions are not in conflict with applicable local laws.
- b. The Contractor shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on work under the Contract. The Contractor shall promptly furnish the Owner with reports concerning these matters.

121. SANITARY FACILITIES

The Contractor shall furnish, install, and maintain ample sanitary facilities for the workmen. As the needs arise a sufficient number of enclosed temporary toilets shall be conveniently placed as required by the sanitary codes of the State and Local Government. Drinking water shall be provided from an approved source, so piped or transported as to keep it safe and fresh and served from single service containers or satisfactory types of sanitary drinking stands or fountains. All such facilities and services shall be furnished in strict accordance with existing and governing health regulations.

122. USE OF PREMISES

- a. The Contractor shall confine his equipment, storage of materials, and construction operations to the Contract limits as shown on the Drawings and as prescribed by ordinances or permits, or as may be directed by the City, and shall not unreasonably encumber the site or public rights of way with his materials and construction equipment.
- b. The Contractor shall comply with all reasonable instructions of the City and the ordinances and codes of the Local Government regarding signs, advertising, traffic, fires, explosives, danger signals, barricades.

123. REMOVAL OF DEBRIS, CLEANING, ETC.

The Contractor shall, periodically or as directed during the progress of the work, remove and legally dispose of all surplus excavated material and debris, and keep the Project Area and public rights of way reasonably clear. Upon completion of the work, he shall remove all temporary construction facilities, debris and unused materials provided for the work, and put the whole site of the work and public rights of way in a neat and clean condition. Trash burning on the site of the work will be subject to prior approval of the City and existing State and local regulations.

124. INSPECTION

- a. All materials and workmanship shall be subject to inspection, examination or test by the City or the Architect at any and all times during manufacture or construction and at any and all places where such manufacture or construction is carried on. The City shall have the right to reject defective or substandard material and workmanship or require its correction. Unacceptable workmanship shall be satisfactorily corrected. Rejected material shall be promptly segregated and removed from the Project Area and replaced with material of specified quality without charge therefor. If the Contractor fails to proceed at once with the correction of rejected workmanship or defective material, the City may contract or otherwise have the defects remedied or rejected materials removed from the Project Area and charge the cost of the same against any moneys which may be due the Contractor, without prejudice to any other rights or remedies of the City.
- b. The Contractor shall furnish promptly all materials reasonably necessary for any tests which may be required. (See Section 118 hereof). All tests by the City will be performed in such a manner as not to delay the work unnecessarily and will be made in accordance with the provisions of the Technical Specifications.
- c. The Contractor shall notify the City sufficiently in advance of back-filling or concealing any facilities to permit proper inspection. If any facilities are concealed without approval or consent by the City, the Contractor shall uncover for inspection and recover such facilities all at his own expense, when so requested by the City.

Should it be considered necessary or advisable by the City at any time before final acceptance of the entire work to make an examination of work already completed by uncovering the same, the Contractor shall on request promptly furnish all necessary facilities, labor, and material. If such work is found to be defective in any important or essential respect, due to fault of the Contractor or his subcontractors the Contractor shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, the actual cost of labor and material necessarily involved in the examination and replacement, plus 15 percent of such costs to cover superintendence, general expenses and profit, shall be allowed the Contractor and he shall, in addition, if completion of the work of the entire Contract has been delayed thereby, be granted a suitable extension of time on account of the additional work involved.

- d. Inspection of materials and appurtenances to be incorporated in the Improvements embraced in this Contract may be made at the place of production, manufacture or shipment, whenever the quantity justifies it, and such inspection and acceptance, unless otherwise stated in the Technical Specifications, shall be final, except as regards (1) latent defects, (2) departures from specific requirements of the Contract, (3) damage or loss in transit, or (4) fraud or such gross mistakes as amount to fraud. Subject to the requirements contained in the preceding sentence, the inspection of materials as a whole or in part will be made at the Project Site.
- e. Neither inspection, testing, approval nor acceptance of the work in whole or in part, by the City or its agents shall relieve the Contractor or his sureties of full responsibility for materials furnished or work performed not in strict accordance with the Contract.

125. REVIEW BY THE CITY

The City, its authorized representatives and agents, and the Architect, shall, at all times have access to and be permitted to observe and review all work, materials, equipment, payrolls, personnel records, employment conditions, and other relevant data and records pertaining to this Contract; provided,

however, that all instructions and approvals with respect to work will be given to the Contractor only by the City through its authorized representative or agents.

126. FINAL INSPECTION

When the work embraced in this Contract is substantially completed, the Contractor shall notify the City in writing that the work will be ready for final inspection on a definite date which shall be stated in such notice. The notice shall bear the signed concurrence of the representative of the City having charge of inspection. If the City determines that the status of the Improvements is as represented, it will make the arrangements necessary to have final inspection commenced on the date stated in such notice, or as soon thereafter as is practicable.

127. DEDUCTION FOR UNCORRECTED WORK

If the City deems it not expedient to require the Contractor to correct work not done in accordance with the Contract Documents, an equitable deduction from the Contract Price will be made by agreement between the Contractor and the City and subject to settlement, in case of dispute, as herein provided.

128. TIME

- a. The Contract Time is the period of time allotted in the Contract for completion of the Work. The date of commencement of the Work is the date established in a notice to proceed issued by the City to the Contractor. The Contractor shall begin the Work upon receipt of the notice to proceed.
- b. The term "day" as used herein shall mean calendar day.
- c. If a date of completion is included in the Contract, it shall be the Date of Substantial Completion of the Work, including authorized extensions thereto. The "Date of Substantial Completion of the Work" is the date certified by the City when construction is sufficiently complete, in accordance with the Contract, so the City may occupy the Work for the use for which it is intended.

129. INSURANCE

The Contractor shall carry the following insurance, at his expense, and no direct payment for premiums shall be made by the City. Carriage of such insurance shall in no way alleviate the Contractor of his responsibilities under the contract.

- a. The Contractor will be required to carry insurance of the kinds and in the amounts hereinafter specified. The Contractor shall not commence work under the contract until he has obtained all the insurance required by these specifications and until such insurance has been approved by the City Attorney, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor shall have been so obtained and approved.
- b. Insurance
The Contractor shall provide Commercial General Liability in an amount not less than \$1,500,000.00 combined single limit and Automobile Liability Insurance in an amount not less than \$1,500,000.00 combined single limit shall be in a company licensed to do business in

Minnesota; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability. Property damage coverage for explosion, collapse, and underground "xcu" to be included. City of Duluth shall be named as Additional Insured under the Commercial General Liability policy. Contractor shall also provide evidence of Statutory Workers' Compensation Insurance. Contractor to provide Certificate of Insurance evidencing such coverage with 30-day notice of cancellation, non-renewal, or material change provision included.

c. Subcontractor's Insurance

In the event any work contemplated by the contract is sublet, the Contractor shall have the duty to assure that the subcontractors provide insurance in accord with the minimum requirements hereinabove imposed on the Contractor.

d. Proof of Insurance

The Contractor shall not proceed with the work contemplated in this contract until he has furnished the City Attorney of the City of Duluth with satisfactory proof of the existence and carriage of insurance of the kinds and in the amounts specified.

e. Indemnification

The Contractor shall defend, indemnify and save harmless the City and all of its officers, agents and employees from all suits, actions or claims of any character, name and description brought for on account of any injuries or damages received or sustained by any person, persons or property, by or from the act or acts of said Contractor, or by or in consequence of any negligence in safeguarding the work, or through the use of unacceptable materials in constructing the work, or by or on account of any act or omission, neglect or misconduct of said Contractor, or from any claims or amount arising or recovered under the Workmen's Compensation Law or any other law, by-law, ordinance, order or decree, and so much of the money due the said Contractor under and by virtue of his contract, as shall be considered necessary by the City may be retained for the use of the City or in case no money is due, his surety shall be held until such suit or suits, action or actions, claim or claims, for injuries or damages as aforesaid, shall have been settled and suitable evidence to that effect furnished to the City. The Contractor shall indemnify and save harmless the City from any and all losses caused by or on account of any claims or amounts recovered for any infringement of patent, trademark, or copyright.

The unauthorized use by the Contractor of public or private property for any purpose may be considered an injury or damage to the property so used.

130. PATENTS

The Contractor shall hold and save the City, its officers, employees, representatives and agents, and the Architect, harmless from liability of any nature or kind, including costs and expenses, for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the City, unless otherwise specifically stipulated in the Technical Specifications.

131. WARRANTY

No material, supplies, or equipment to be installed or furnished under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale, lease-purchase or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. The Contractor

shall warrant good title to all materials, supplies, and equipment installed or incorporated in the work and upon completion of all work, shall deliver the same together with all improvements and appurtenances constructed or placed thereon by him to the City free from any claims, liens, or charges. Neither the Contractor nor any person, firm or corporation furnishing any material or labor for any work covered by this Contract shall have any right to a lien upon any improvement or appurtenance thereon. Nothing contained in this paragraph, however, shall defeat or impair the right of persons furnishing materials or labor to recover under any bond given by the Contractor for their protection or any rights under any law permitting such persons to look to funds due the Contractor in the hands of the City. The provisions of this paragraph shall be inserted in all subcontracts and material contracts and notices for the work when no formal contract is entered into for such materials.

132. GENERAL GUARANTY

- a. Neither the final certificate of payment nor any provisions in the Contract nor partial or entire use of the improvements embraced in this Contract by the City or the public shall constitute an acceptance of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall promptly remedy any defects in the work and pay for any damage to other work resulting therefrom which subsequently appears. The City will give notice of defective materials and work with reasonable promptness.
- b. If, within one year after the Date of Substantial Completion or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract, any of the Work is found to be defective or not in accordance with the specifications of the Contract, the Contractor shall correct it promptly upon receipt of a written notice from the City to do so, unless the City has previously given the Contractor a written acceptance of such condition or work.

133. ENVIRONMENTAL CONDITIONS

Waste Disposal: The SUBRECIPIENT shall comply with the most recent Minnesota Pollution Control Agency (MPCA) waste disposal requirements and include said disposal requirements in the project's base bid specifications. Waste material, including but not limited to: construction/demolition debris, asbestos-containing material, residential lead paint waste, hazardous waste, and above- and under-ground tanks, shall be disposed of at MPCA-permitted landfill sites only. Copies of all notification, shipment, and landfill receipt records shall be maintained in the subrecipient's project file.

Minnesota Pollution Control Agency
520 Lafayette Rd., St. Paul, MN 55155
(800) 657-3864

- a. Construction/Demolition Waste. Construction/demolition debris will be disposed of at a Minnesota Pollution Control Agency (MPCA) permitted landfill site only, with copies of all landfill receipts for said debris maintained in the subrecipient's project file. (*Solid Waste Management Rules, Chapter 7001 & 7035*)
- b. Asbestos-Containing Waste. All asbestos removal and disposal shall be in strict accordance with all applicable permits. The contract bidder shall include the price of all permits, testing, removal, and disposal in the project base bid.

- Project asbestos-containing material removal pursuant to USEPA 40 CFR 61.145 Standard for Demolition and Renovation.
 - All asbestos-containing waste material shall be disposed of pursuant to USEPA 40 CFR 61.150 at a MPCA permitted landfill site only, in accordance with the provisions of USEPA 40 CFR 61.154.
 - For all asbestos-containing material, a copy of the MPCA Notification of Demolition and Renovation record and all Waste Shipment records shall be maintained in the subrecipient's project file.
- c. Hazardous Waste Material. The MPCA shall be contacted for instructions on handling and disposing of materials containing Polychlorinated Biphenyls (PCBs) or any other identified/encountered hazardous materials. A copy of all correspondence and disposal records shall be maintained in the subrecipient's project file.
- MPCA Hazardous Waste Compliance Guide -- October 1989, Revised January 1991
 - MPCA Hazardous Waste Fact Sheet Checklist -- August 1993
- d. Above and Below Ground Storage Tanks. The MPCA Tanks and Spills Section shall be contacted for instructions on handling or removal of all above- and underground tanks identified/encountered. A copy of all correspondence and disposal records shall be maintained in the subrecipient's project file.
- e. Residential Lead Paint Waste. Projects whose activities produce residential lead paint waste are responsible for the management and proper disposal of the waste at an MPCA permitted landfill site only, pursuant to Minn. Stat. sections 116.87, 116.875, 116.88. A copy of the Residential Lead Abatement Notification and Shipping forms shall be maintained in the subrecipient's project file.

134. CONTRACTOR'S RECORDS

The contractor agrees that, as provided in Minnesota Statutes 16C.05, Subd. 5, contractor's books, records, documents, and accounting procedures and practices are subject to examination by the city or the state auditor for six years from the date of execution of this contract.

(End of General Conditions)

CITY OF DULUTH - PART II -
SUPPLEMENTARY GENERAL CONDITIONS FOR FEDERALLY AND/OR CITY ASSISTED ACTIVITIES
(revised 4/30/07)

The following conditions take precedence over any conflicting conditions in this Contract.

<u>Section</u>	<u>Title</u>
1	Restrictions on Disbursements, Subcontractors Federal Agency Requirements, Separability, Property
2	Miscellaneous Provisions
3	Definitions
4	Environmental Provisions
5	Contract Compliance
6	Records, Reports and Information, Audits and Inspections
7	Conflict of Interest and Lobbying
8	Labor Standards - Physical Improvement Projects
9	Minnesota Department of Transportation Specification 1960 Partial Payments
10	Housing and Urban Development (HUD) Section 4010
11	Equal Opportunity and Affirmative Action
12	Employment Opportunities - "HUD Section 3"
13	Federal Requirements for Minority/Women Business Enterprises Contract Guidance - MPFA
14	Forms

Section I

Restrictions on Disbursements

No money under this Contract shall be disbursed by the City to any Contractor except pursuant to a written contract which incorporates the applicable PART II, Supplementary General Conditions for Federally and/or City Assisted Activities, and unless the Contractor is in compliance with the Federal Agency requirements with regard to accounting and fiscal matters to the extent they are applicable.

Subcontractors

(A) The Contractor shall include in any subcontract the clauses set forth in the PART II, Supplementary General Conditions for Federally and/or City Assisted Activities in their entirety and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

(B) The Contractor shall not subcontract any part of the work covered by this Contract or permit subcontracted work to be further subcontracted without the City's prior written approval of the subcontractors. The City will not approve any subcontractor for work covered by this Contract who is at the time ineligible under the provisions of any applicable regulations issued by a Federal Agency or the Secretary of Labor, United States Department of Labor, to receive an award of such subcontract.

Federal Agency Requirements

Unearned payments under this Contract may be suspended or terminated upon refusal to accept any additional conditions that may be imposed by the Federal Agency at any time; or if the grant, if applicable, to the City under which this Contract is made is suspended or terminated.

Separability

If any provisions of this Contract is held invalid, the remainder of this Contract shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

Property

Acquisition, use, and disposal of all property, materials and goods acquired as a result of activities made possible by this Contract shall be accomplished in accordance with the applicable provisions of Federal Management Circular (FMC)-74-7, as amended.

Section 2

Miscellaneous Provisions

(A) **Copyrights.** In the event this Contract results in a book or other copyrightable material, the author is free to copyright the work, but Federal Agency and the City reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all copyrighted material and all material which can be copyrighted.

(B) **Patents.** Any discovery or invention arising out of or developed in the course of work aided by this Contract shall be promptly and fully reported to the Federal Agency and the City for determination by the Federal Agency as to whether patent protection on such invention or discovery shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interests.

(C) **Political Activity Prohibited.** None of the funds, materials, property or services provided directly or indirectly under this Contract shall be used in the performance of this Contract on any partisan political activity, or to further the election or defeat of any candidate for public office.

(D) **Lobbying Prohibited.** None of the funds under this Contract shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before the Congress or the City.

(E) **Prohibition of and Elimination of Lead-Based Paint Hazard.** Notwithstanding any other provision, the Agency and Contractor agree to comply with the regulation issued by the Secretary of Housing and Urban Development set forth in 37 F. R. 22732-3 and all applicable rules and orders issued thereunder which prohibit the use of lead-based paint in residential structures undergoing Federally assisted construction or rehabilitation and require the elimination of lead-based paint hazards. Every contract or subcontract, including paint, pursuant to which such Federally assisted construction or rehabilitation is performed shall include appropriate provisions prohibiting the use of lead-based paint.

(F) **Architectural Barriers Act.** The design for and construction of any facility funded in whole or in part by this Contract shall be in conformance with the American Standard Specification for Making Buildings and Facilities Accessible and Usable by the Physically Handicapped, Number A-117.1-1971, as modified.

(G) **Relocation and Acquisition.** Any relocation or acquisition resulting from activities funded in whole or in part by this Contract shall be in conformance with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (40 U.S.C. 4601) and the implementing regulations 24CFR Part 42.

(H) **Prohibition Against Payments of Bonus or Commission.** The assistance provided under this Contract shall not be used in the payment of any bonus or commission for the purpose of obtaining Federal Agency approval for such assistance, or Federal Agency approval of applications for additional assistance, or any other approval or concurrence of a Federal Agency required under this Contract, Federal Law or Federal Regulations thereto; provided, however, that reasonable fees or bonafide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

(I) **Hatch Act.** Where applicable, the Contractor will comply with the provisions of the Hatch Act which limits the political activity of the Contractor's employees.

Section 3

Definitions

- (A) City means the City of Duluth, Contracting Officer, or other persons authorized to act on behalf of the City of Duluth.
- (B) Contracting Officer is the delegated representative of the City who has the responsibility for administering the Project.
- (C) Contractor means an entity, whether public or private, which furnishes (other than standard commercial supplies, office space or printing services) to the City, products, services or supplies as described in this project Contract.
- (D) Federal Agency means the United States, the District of Columbia, and any executive department, independent establishment, administrative agency, or instrumentality of the United States or of the District of Columbia, including any corporation, all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or by any of the foregoing departments, establishments, agencies, and instrumentalities. The term Federal Agency shall also include the person or persons authorized to act on behalf of said Federal Agency.
- (E) Project means the activities to be undertaken by the Contractor as described in this Contract, which from time to time may be amended by mutual consent of the City and Contractor.
- (F) Subcontractor means an entity, regardless of tier, which has entered into an agreement with the Contractor or another Subcontractor, to undertake certain Project activities as described in that agreement.
- (G) The term labor standards, as used in the Contract, means the requirements of the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act (other than those relating to safety and health), the Copeland Act, and the prevailing wage provisions of the other statutes listed in 20 CFR 5.1.
- (H) Work means all labor necessary to produce the construction required by the Contract Documents, all materials and equipment incorporated or to be incorporated in such construction, products, services, or supplies required by the Contract Documents, or any other requirements set forth in the Contract.
- (I) Additional Definitions, that are applicable to the Labor Standards provisions - Section 8 - of this Contract can be found in 29CFR5.2 as published by the U.S. Department of Labor and said definitions are hereby incorporated by reference into the provisions of this Contract.

Section 4

Environmental Provisions

- (A) The Contractor agrees to follow the regulations, requirements, policies, goals and procedures set forth by the Council on Environmental Quality (CEQ) under provisions of the National Environmental Policy Act (NEPA) (Pub. L 91-190, 42 U.S.C. 4321 et seq.), Executive Order 11514, and 40 CFR Part 1500.
- (B) **Historic Properties.** The Contractor agrees to follow the regulations, requirements, policies, goals, and procedures set forth under provisions of the National Historic Preservation Act of 1966 (Pub. L. 89-665); Preservation of Historic and Archeological Data Act of 1974 (Pub. L. 93-291); Executive Order 11593; 36 CFR, Part 800 and applicable State legislation or regulations.
- (C) **Coastal Zones and Wetlands.** The Contractor agrees to follow the regulations, requirements, policies, goals and procedures set forth under provisions of the Coastal Zone Management Act of 1972 (Pub. L. 92-583) and applicable State legislation or regulations.
- (D) **Noise.** The Contractor agrees to comply with provisions set forth in the U.S. Department of Housing and Urban Development Handbook 1390.2, Noise Abatement and Control, Department Policy, Responsibility and Standards, 1971.
- (E) **Flood Plain.** The Contractor agrees to comply with the provisions set forth in the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and implementing regulations; Title 24, Chapter X, Subchapter B, National Flood Insurance Program, Executive Order 11296, and Executive Order 11988 relating to the evaluation of flood hazards.
- (F) **Air Quality.** The Contractor agrees to comply with provisions set forth in the Clean Air Act (Pub. L. 90-148) and Clean Air Act Amendments of 1970 (Pub. L. 91-604); and applicable U.S. Environmental Protection Agency implementing regulations.
- (G) **Water Quality.** The Contractor agrees to comply with the provisions set forth in the Federal Water Pollution Control Act (Pub. L. 92-500) and applicable U.S. Environmental Protection Agency implementing regulations, and Executive Order 11288 relating to the prevention, control, and abatement of water pollution.
- (H) **Wildlife.** The Contractor agrees to comply with the provisions of the Fish and Wildlife Coordination Act (Pub. L. 85-264).

Section 5

Contract Compliance

- (A) In the event of the Contractor's noncompliance with the provisions of this Contract or with any of the said regulations, the City may withhold payment(s) until evidence of compliance by the Contractor has been demonstrated, or the Contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further City contracts.
- (B) In the event the Contract is terminated or canceled as a result of noncompliance with any of the provisions of this Contract, the City may subject to bids the remainder of the Project for which this Contract was made. The City shall have the right upon termination or suspension to withhold all further payments under this Contract to the Contractor. Upon the award of a new contract for the remainder of the Project, the City shall pay to the Contractor an amount no more than the balance remaining due to the Contractor less the sum of the costs incurred by the City which are necessary in preparing the new bid specifications. In the event the amount paid the Contractor prior to the date of termination or cancellation exceeds the full amount of this Contract less the cost of the new contract and the additional costs mentioned above, the Contractor agrees to reimburse the City for such excess amount within ninety days after the new contract is awarded by the above procedures.
- (C) Provisions contained in subparagraph (A) and (B) above shall not be interpreted as precluding any authorized Federal, State, or County governmental unit from exercising their legal administrative or other responsibilities in respect to the enforcement by said governmental units of laws or regulations concerning activities of the Contractor.

Section 6

Records

- (A) **Establishment and Maintenance of Records.** Records shall be maintained in accordance with requirements prescribed by the Federal Agency or the City with respect to all matters covered by this Contract. Except as otherwise authorized by the Federal Agency, such records shall be maintained for a period of three years after receipt of final payment under this Contract.
- (B) **Documentation of Costs.** All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Contract shall be clearly identified and readily accessible.

Reports and Information

At such times and in such forms as the Federal Agency or the City may require, there shall be furnished to the Federal Agency or the City such statements, records, data and information as the Federal Agency or the City may request pertaining to matters covered by this Contract.

Audits and Inspection

At any time during normal business hours and as often as the City, the Federal Agency and/or the Comptroller General of the United States may deem necessary, there shall be made available to the City, the Federal Agency and/or representatives of the Comptroller General for examination of all its records with respect to all matters covered by this Contract and will permit the City, the Federal Agency and/or representative of the Comptroller General to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Contract.

Section 7

Conflict of Interest and Lobbying

(A) **Interest of Members, Officers, or Employees of the City, Members of Local Governing Body, or Other Public Officials.** No member, officer, or employee of the City, or its designees or agents, or member of the governing body of the City, during his/her tenure of for one year thereafter, shall have any interest, direct or indirect in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project assisted under this Contract. Any contract in which any of the above indicated individuals becomes directly or indirectly, interested, personally or as a member of a firm, or as an officer, director, or stockholder of a corporation, shall be and become absolutely void; and any money which shall have been paid on such contract by the City may be recovered back from any or all persons interested therein, by a joint action or several actions.

(B) The Contractor agrees that he will incorporate into every contract required to be in writing the following provisions: **Interest of Contractors and Employees** - The Contractor covenants that he presently has no interest and shall not acquire any interest, direct or indirect, in the Project which would conflict in any manner or degree with the performance of this Contract, and no person having any conflicting interest shall be employed. Any interest on the part of the Contractor or his employees must be disclosed to the Federal Agency and the City. Provided, however, that this paragraph shall be interpreted in such a manner so as not to unreasonably impede any statutory requirements that opportunity be provided for employment of and participation by certain residents of a designated geographical area, if applicable.

(C) **Interest of Member or of Delegate to Congress.** No member or of Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.

(D) The Contractor by signing this document certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The above certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1332, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(E) The parties to this Contract certify and agree that they are under no contractual or other disability which would prevent them from complying with the terms of this Contract.

Section 8

Labor Standards - Physical Improvement Projects

Where applicable, there shall be included in all construction, rehabilitation, alteration or repair contracts with private entities made possible by or resulting from this Contract, the following Labor Standards provisions;

(A) **General Requirements.**

(1) **Subcontracts.** The Contractor shall include in any subcontract the clauses set forth in Section 8, **Labor Standards**, in their entirety and also a clause requiring the subcontractors to include these clauses in any Tower tier subcontract which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

(2) The transporting of materials and supplies to or from the site of the Project or Program to which this Contract pertains by the Employees of the Contractor or of any subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the Project or Program to which this Contract pertains by persons employed by the Contractor or by any subcontractor, shall for the purpose of this Contract, and without limiting the generality of the foregoing provisions of this Contract, be deemed to be work to which these **Labor Standards** provisions are applicable.

(3) No person under the age of eighteen years shall be employed on work covered by this Contract.

(4) In connection with the performance of work under this Contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, September 10, 1955 (18 U.S.C. 4082 (c) (2)) and Executive Order 11755, December 29, 1973.

(5) The Contractor will permit authorized representatives of the Federal Agency and the City to interview employees during working hours on the job.

(6) No employee to whom the wage, salary, or other **Labor Standards** provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the Labor Standards applicable under this Contract to his employer.

(B) **Safety Standards.** No Contractor or subcontractor contracting for any part of a construction contract shall require any laborer or mechanic, including apprentices and trainees, employed in the performance of the Contract to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health or safety, as determined under construction safety and health standards promulgated by the Secretary of Labor. The Contractor or subcontractor comply with all the rules, regulations, and relevant orders, promulgated by the Secretary of Labor pursuant to Public Law 91-54.

(C) **Davis-Bacon Act - 29 CFR 5.5**

Refer to Section 10, Page 9

Housing and Urban Development (HUD) form-4010 (07/2003) Ref Handbook 1344.1

City of Duluth "Mini Davis-Bacon"

(D) City of Duluth - Minimum Wage Ordinance 8940, as Amended.

(1) On a project (as defined below) funded in whole or in part by federal and/or state funds, these local provisions shall prevail in those instances where the requirements of the local provisions are equal to or greater than similar minimum labor standards provisions as set forth in applicable federal and/or state laws and regulations.

(2) In all contracts in excess of \$2,000 for projects (as defined below), the Contractor's particular attention is called to Ordinance 8940, effective June 8, 1989, respectively coded as Article IV of Chapter 2 of the Duluth City Code, and entitled "An Ordinance Pertaining to Wages and Working Hours of Persons on Public Works in the City of Duluth", as set forth below:

(3) Definitions.

For the purposes of this section the following words and phrases shall have the meanings respectively ascribed to them in this section:

- (a) **Basic hourly rate.** - The hourly wage paid to any employee.
- (b) **Prevailing wage rate.** - The basic hourly rate plus fringe benefits prevailing in the city of Duluth as determined by the United States secretary of labor pursuant to the Davis-Bacon act, as amended; provided that whenever employer and employee organizations employing and representing a majority of a class of workers in a particular industry within the city jointly certify that the prevailing basic hourly rate plus fringe benefits of such workers differs from the amount determined by the secretary of labor, the certified rate shall be considered to be the prevailing wage rate for such class of workers in that industry.
- (c) **Fringe benefits.** - Employer contribution for health and welfare benefits, vacation benefits, pension benefits, and all other economic benefits other than the basic hourly rate.
- (d) **Apprentice** - An employee who is working under a training program which is approved either by the U.S. Department of Labor Bureau of Apprenticeship & Training or the Minnesota Director of Voluntary Apprenticeship; see apprentice ratios on page 22 and HUD 4010 in Section 10..
- (e) **Trainee** - An employee registered with the U. S. Department of Labor Employment & Training Administration; see HUD 4010 in Section 10.
- (f) **Project.** - Erection, construction, demolition, painting, remodeling or repairing of any public building, highway, sidewalk, bridge, water or gas line, sewer and sewage treatment facility or other public work performed under contract with the city.
- (g) **Labor mechanic.** - All persons utilized, employed or working on a project who are doing work usually done by mechanics and laborers, including proprietors, partners, and members of cooperatives.

(4) Wage Rates and Hours for City of Duluth Projects.

(a) Any contract which provides for a project of estimated total cost of over \$2,000.00 shall contain a stipulation that no laborer, mechanic or apprentice-trainee employed directly upon the project work site by the contractor or any subcontractor shall be permitted or required to work at a rate of pay less than the prevailing wage rate; nor shall any such employee be permitted or required to work more than 8 hours in any work day or 40 hours in any work week unless he is paid at a rate of at least 1 1/2 times the basic hourly rate for all hours in excess of 8 per day **OR** 40 per week and unless he receives fringe benefits that are at least equal to those in the prevailing wage rate; provided that whenever employer and employee organizations employing and representing a majority of a class of workers in a particular industry within the city jointly certify that the maximum number of hours that such persons may work under existing labor agreements before overtime wages must be paid differs from the hours specified in this paragraph, the maximum number of hours specified in such labor agreements shall be substituted for those specified above in applying the provisions of this paragraph to such workers.

(b) The word "or" in the state statute and the City of Duluth Code refers to the number of hours worked in any one week or, in the alternative, the number of hours worked in any one day in the week (the days in one week being totaled for reporting purposes); the law requires use of the alternative which results in the higher number of overtime hours for each employee whose time is being reported.

EXCEPTIONS: Federal government funding only and HUD (Housing and Urban Development) funding - see point "e"

In summary, if a project is solely funded with City of Duluth monies, the City allows the employees to work four ten-hour days and be paid at the regular hourly rate for those ten hours; exceeding hours must be paid at the overtime rate. An employer may not withhold overtime payment exclusively until 40 hours per week have been worked. Daily overtime must be paid as it is earned.

• The base workweek hours must be clearly indicated on each payroll. Employees may be assigned a different workweek; however, that must be clearly marked beside the employees' names.

The following are examples of how these rules apply to different situations.

- TT refers to the total time worked on the day or in the week
- RT refers to the hours worked at the regular rate of pay (straight time)
- OT refers to the hours worked for which overtime must be paid

	State Funded with or without federal funding Projects							City-only Funded Projects (4 ten-hour days)						
	Mon	Tues	Wed	Thurs	Fri	Sat	Total	Mon	Tues	Wed	Thurs	Fri	Sat	Total
TT	10	10	10	10	0	6	46	10	10	10	10	0	6	46
RT	8	8	8	8	0	6	38	10	10	10	10	0	0	40
OT	2	2	2	2	0	0	8	0	0	0	0	0	6	6

	State Funded with or without federal funding Projects							City-only Funded Projects (4 ten-hour days)						
	Mon	Tues	Wed	Thurs	Fri	Sat	Total	Mon	Tues	Wed	Thurs	Fri	Sat	Total
TT	0	10	10	0	7	0	27	10	0	12	0	0	0	32
RT	0	8	8	0	7	0	23	10	0	10	10	0	0	30
OT	0	2	2	0	0	0	4	0	0	2	0	0	0	2

(c) Overtime Calculations

Minnesota Statutes Chapter 177.42, subd 4 specifies that the prevailing hours of labor may not be more than eight hours per day or more than 40 hours per week (as stated above in (b), the City of Duluth does allow for ten hours per day/40 hours per week with City funding *only*.

Minnesota Statutes Chapter 177.42, subd 5 defines the hourly basic rate as the hourly wage paid to any employee. (subd 6): The prevailing wage rate means the hourly basic rate of pay plus the contribution for health and welfare benefits, vacation benefits, pension benefits, and any other economic benefit paid to the largest number of workers engaged in the same class of labor within the area...

Minnesota Statutes Chapter 177.43, subd 1 (1) ...employees are permitted to work more hours than the prevailing hours of labor [being] paid for all hours in excess of the prevailing hours at a rate of at least 1-½ times the hourly basic rate of pay. (2) A laborer or mechanic may not be paid a lesser rate of wages than the prevailing wage rate in the same or most similar trade or occupation in the area.

An employer may pay a lower hourly rate and higher fringe benefit rate--to a bona fide plan--than stated in the wage decision providing the total of the two rates is equal to or greater than the total in the wage decision.

Overtime Calculation with Fringe Benefits Paid to Bona Fide Plans

For overtime purposes, an employer paying higher fringe benefits to a bona fide plan and paying a lower hourly rate **MUST** calculate the overtime on the higher hourly rate as stated in the contract's wage decision.

Overtime Calculation with Cash Payment of Fringe Benefits

When the fringe benefit is paid directly to an employee, the prevailing base rate and the fringe benefit rate for a specific classification are totaled to arrive at the hourly rate. *Overtime is calculated (1.5 x) the base rate with the fringe benefit amount added to that rate: base rate x 1.5 + fringe benefit rate = overtime rate.*

(d) A contractor shall not reduce a worker's private, regular rate of pay when the wage rate certified by the U. S. Department of Labor or the Minnesota Department of Labor & Industry is less than the worker's normal hourly wage [Minnesota Statute 181.03 subdivision 1(2)].

(e) Regular Time & Overtime Definitions

· **State of Minnesota** funded projects with or without federal funding *only allow for five eight-hour days per week at regular time*. Overtime is calculated at a rate not less than time and one-half (1.5) of the prevailing base rate as stated in the wage decision--OR the base rate the employee is being paid if it is higher than the required base rate--plus the straight time fringe benefit amount.

· **City of Duluth** funded projects do permit four ten-hour work days at regular time--see point 4-a, b for stipulations. Overtime is calculated at a rate not less than time and one-half (1.5) of the prevailing base rate as stated in the wage decision--OR the base rate the employee is being paid if it is higher than the required base rate--plus the straight time fringe benefit amount.

· **Federal** funded only projects allow overtime pay for hours worked in excess of 40 in a workweek at a rate not less than time and one-half (1.5) of the prevailing base rate as stated in the wage decision--OR the base rate the employee is being paid if it is higher than the required base rate--plus the straight time fringe benefit amount.

· **HUD** funded projects allow overtime pay for hours worked in excess of 40 in a workweek at a rate not less than time and one-half (1.5) of the prevailing base rate as stated in the wage decision--OR the base rate the employee is being paid if it is higher than the required base rate--plus the straight time fringe benefit amount.

(f) The minimum hourly prevailing wages are contained in each project specification. When both federal (general decision rates from the U. S. Department of Labor) and State of Minnesota prevailing wages for state funded construction projects from the Minnesota Department of Labor and Industry are used, the prime contractor and all subcontractors including trucking operations, are required to pay the higher of the two wages for all laborers and mechanics [MnDOT Contract Administration Manual, Section 5-591.320].

(g) The prime contractor and any lower-tier subcontractor shall review all wage decisions and compensate a worker according to the type of work performed and at the rate that is the greatest.

(h) State of Minnesota prevailing wages typically list two rates for each classification with two effective dates. Should any City of Duluth contract continue to and past the second effective date, that rate and fringe benefit will be in effect through the remainder of the project.

(i) All contracts for city projects shall have applicable schedules of prevailing wage rates set forth in the contract. Schedules of applicable prevailing wage rates shall be present on all project job sites and shall either be posted on the site or be on the person of any supervisor in charge of the job site.

(j) Employees on projects shall be paid at least weekly. Fringe benefits shall be paid either in cash or to an employee benefit plan that has been approved by the U.S. Department of Labor.

■ **The fringe benefit package is an integral portion of the prevailing wage. Should the prime contractor become delinquent with any fringe benefit plan administrator's requirements for monthly payment, an estimated amount due that plan plus penalties will be withheld from the monthly estimate(s). This also pertains to subcontractors; their fringe plan payment delinquency will affect the monthly estimate(s) in the same manner. See MnDOT Specification 1906 on page eight.**

See Statement of Compliance and Certified Payroll Report requirements in Section 10, HUD 4010 and web sites in Section 14, Forms.

(k) Any contractor or subcontractor working on a project shall furnish the City with **original** certified payroll reports with **original signatures** relating to the project. Such certified payroll reports shall be **submitted weekly** on U.S. Department of Labor standard forms (WH-347) or their equivalent--using the same format--to the City of Duluth Labor Standards representative. All City of Duluth funded projects must have the base workweek hours indicated on the certified payroll form and/or beside each employee's name (should some employees be working different base workweeks).

(l) No contractor or subcontractor working on a project shall evade or attempt to evade the provisions of this section through the use of non-recognized training programs. The only employees involved in training programs that shall be allowed to work on projects covered by this section shall be apprentice-trainees as defined by this article.

(m) Any person violating the provisions of this section shall be guilty of a misdemeanor with each day of violation constituting a separate offense. In addition, if the prevailing wage rate and accompanying fringe benefit rate is not paid to employees working on a project, the City of Duluth may withhold contract payments to the prime contractor until such deficiencies are corrected. Should fringe benefits be paid to authorized Plans, the payments must be made within the demands of those Plans. Delinquencies may result in withholding of project funds to the prime contractor.

(n) This section shall not apply to contracts for projects where the total cost of the project is less than \$2,000.00; nor to materialmen who do no more than deliver

materials to the work site, except that this section shall apply to employees who deliver asphalt, concrete or mineral aggregate such as sand, gravel or stone where such material is incorporated into the project by depositing the material substantially in place, either directly or through spreaders, from the transporting vehicle.

(5) **Helpers**

A helper may perform work *only* if the helper classification is specified and defined in the federal wage decision and/or State of Minnesota wage decision incorporated into the project contract. Without such a helper classification, the contractor must assign a job classification that is the "same or most similar" [Minnesota Statute 177.44, subdivision 1] and compensate the helper for the actual work performed regardless of the helper's skill level.

(5) **Apprentice Ratios**

Journeyworkers must be on site with the apprentices and their hours must match.

FUNDING SOURCE:

City of Duluth and State of Minnesota with or without Federal funding

- Apprentices are not permitted to work alone under any circumstances.
- Working foremen are acceptable as a journeyworker PROVIDING he/she is in the same classification.
 - » Example: carpenter foreman and carpenter apprentice
- Ratios are determined by the trade's labor agreement.
- In the absence of ratio language, the following State of Minnesota apprenticeship ratios will be applied:
(apprentice:journeyworker) 1:1 2:4 3:7 4:10, etc.
- Employees working in excess of the allowable ratio must be paid the full journeyworker compensation.
- Out-of-ratio apprentices will be calculated beginning with the **apprentice at the highest level of training** and, then, to less senior apprentices in their rank order.
- Should two or more out-of-ratio apprentices have the same level of training, whomever was on the work site first will receive journeyworker pay; if the apprentices at the same level of training began work on the project site at the same time, hours worked out-of-ratio for which restitution is due will be divided among those apprentices.

· Examples:

Four apprentices working unsupervised are on site. [4:0]

Ratio calls for four apprentices and ten journeyworkers [4:10]

Correction: all apprentices will receive the full journeyworker compensation as apprentices are not permitted to work alone.

Three apprentices and two journeyworkers are on site. [3:2]

Ratio calls for three apprentices and seven journeyworkers [3:7]

Two journeyworkers may accompany only one apprentice; therefore, the two highest level apprentices are paid the full journeyworker compensation.

Even though this particular job has three apprentices—the second journeyworker is a mute point; a third journeyworker would also be a mute point in this example.

Correction: the two highest level apprentices are paid the full journeyworker compensation and the third lower level apprentice is considered in ratio.

H U D (CDBG) and Federal funding only

- Apprentices are not permitted to work alone unless the U. S. Department of Labor-approved agreement allows that practice.
- Working foremen are acceptable as a journeyworker PROVIDING he/she is in the same classification.
 - » Example: electrician foreman and electrician apprentice
- Ratios are determined by the trade's U. S. Department of Labor-approved agreement.
- In the event of the absence of ratio language in the applicable agreement, the Minnesota Department of Labor ratio of one apprentice for the first journeyworker and one apprentice for each three journeyworkers thereafter will be applied, (i.e., 1:1, 2:4, 3:7, 4:10, etc.).
- The **legal apprentices are those who first came to work on the job site**; in the event that all apprentices begin work on the project site at the same time, hours worked out-of-ratio for which restitution is due will be divided among the apprentices.
- Time cards will be required to substantiate the start times.
- Employees working in excess of the allowable ratio—or for which U. S. Department of Labor-apprentice agreement/certificate is not provided—must be paid the full journeyworker compensation.

· Examples:

Four apprentices and one journeyworker are on site. [4:1]

Ratio calls for four apprentices and ten journeyworkers. [4:10]

The first apprentice on site is considered in ratio as one journeyworker may only accompany one

apprentice [1:1]; this particular job has four apprentices.

Correction: the second through the fourth apprentices coming on site are paid the full journeyworker compensation.

Six apprentices and two journeyworkers are on site [6:2]

Ratio calls for six apprentices and sixteen journeyworkers [6:16]

The first apprentice on site is considered in ratio as two journeyworkers may only accompany one apprentice; this particular job has six apprentices—the second journeyworker is a mute point.

Correction: the second through sixth apprentices coming on site are paid the full journeyworker compensation.

(6) **Poster Boards**

The prime contractor must construct and display a poster board, which contains all required posters, is legible and is accessible to all workers from the first day of work until the project is 100% complete. Prime contractors are not allowed to place a poster board at an off-site facility location.

(7) **Trucking Issues**

a) For the purpose of sections seven and eight, the term “owner” includes all persons having an ownership interest in the trucking entity or a partnership interest in the trucking entity and has a legal and rightful title to the vehicle(s) or has an approved lease on the vehicle(s). “Operate” means the owner either physically drives the vehicle or hires another to physically drive the vehicle, yet maintains the right to direct the day-to-day operations of the vehicle.

b) Trucking Operations Definitions:

Independent Trucking Operator: an individual or partnership who owns or holds a vehicle under lease and who contracts that vehicle and the owner’s services to an entity which provides construction services to a public works project. The individual owns or leases and drives the equipment, is responsible for the maintenance of the equipment, bears all operating costs, determines the details and means of performing the services, and enters into a legally binding agreement that specifies the relationship to be that of an independent contractor and not that of an employee.

Multiple Truck Operations: any legal business entity that owns more than one vehicle and hires the vehicles out for services to brokers or contractors on public works projects. The owners of a trucking firm may either drive the vehicles or hire employees to drive the vehicles. Employee drivers are subject to the appropriate prevailing wage rate. The owner driving a vehicle is obligated to account for the value of his/her services as a driver at the appropriate prevailing wage.

Partnerships: a legal business entity where two or more individuals hold vehicles under lease and contract those vehicles and their services to an entity which provides construction services to a public works project. The partners own or lease the equipment, are responsible for maintenance and all operating costs, drive the equipment, determine the details and means of performing the services, and enter a legally binding agreement that specifies the relationship to be that of a partner and not that of an employee. All partners are subject to the appropriate prevailing wage.

Corporation: any legal business entity that owns or leases vehicles to provide construction services to public works projects. All individuals are employees of the corporation and subject to the appropriate prevailing wage regardless of title or position.

Broker: an individual or firm who (activities include, but are not limited to):

- contracts to provide trucking services [equipment and driver] in the construction industry to users of such services, such as prime contractors and various subcontractors of the prime;
- contracts to obtain services from other trucking operations and dispatches them to various assignments;
- receives payment from the users (such as prime contractors and various subcontractors) in consideration for the trucking services provided; and
- makes payment to the providers (trucking operations so contracted with) for their services.

(8) **Specific documentation from trucking operations.**

Independent Trucking Operators

The owner/operator of a truck must submit a copy of his/her commercial driver’s license (CDL), cab card, and insurance certificate for each truck the owner/operator drives on each construction project *before commencing work on that project*. These documents must be sent to the prime contractor who will then forward the material to Labor Standards, Engineering Division at the City of Duluth.

Multiple Truck Operators

Weekly certified payrolls and payment of corresponding prevailing wages plus the fringe benefit package will be required for each project where trucks are operating. This covers the owner plus all employees performing work on the project.

Partnerships

Weekly certified payrolls and payment of corresponding prevailing wages plus fringe benefit packages will be required for each project where trucks are operating. This covers all partners of the organization who perform work on the project.

Each partner performing work on a project must submit a copy of his/her commercial driver’s license (CDL), cab card, and insurance certificate for the truck being operated with that weekly certified payroll. It is not necessary to repeat such supporting documentation until a different truck is used and/or certificates or licenses have expired.

Employees of the partnership are always reported on a weekly certified payroll and paid the appropriate prevailing wage plus fringe benefit package for the work being performed.

Corporations

All persons employed by the corporation are subject to receive payment of the prevailing wage plus the fringe benefit package for the work performed on a project regardless of title or position. Weekly certified payrolls must be submitted for all work performed on the project.

Brokers

Truck ownership and a **bonafide contract** between the broker and another trucking operation, a prime contractor, or a subcontractor must be identified. Paperwork must be submitted with the month end trucking report to the City of Duluth Labor Standards representative - Engineering. Certified payrolls are not required when the above documentation is provided and approved.

(10) **Month End Trucking Report - ONLY REQUIRED WITH STATE OF MINNESOTA FUNDING**

The Minnesota Department of Transportation Month End Trucking Report (Mn/DOT TP-90550 7-05) and Minnesota Department of Transportation Month End Trucking Report Statement of Compliance (Mn/DOT TP-90551 7-05) are *only required on state funded projects*.

A guide for completing the forms including definitions and the reports, themselves, may be downloaded from:

www.dot.state.mn.us/const/labor/lcuforms.html

Payment to the prime contractor may be withheld until documentation is received and approved.

(11) Truck Rental Rates - ONLY REQUIRED WITH STATE OF MINNESOTA FUNDING

Truck rental rates are listed in the prevailing wage section of the project specifications.

(12) Minnesota Rules 5200.1105 and 5200.1106

These rules are incorporated into this supplementary general conditions by reference and are found on these web sites:

www.dot.state.mn.us/const/labor/resourcesandlinks.html

13) Truck Axles

Per Minnesota Rules 5200.1100 Master Job Classifications, a truck "unit" refers to all axles including the steering axle. A tag axle is also counted as one of the axles. Examples: four rear axles plus one steering axle = five axles total
one rear axle plus one steering axle = two axles total

(14) Non-Compliance and Enforcement

- a) The prime contractor shall be liable for any unpaid wages to its workers or those of its lower-tier subcontractors, trucking companies/Multiple Truck Owners (MTO's) and/or Independent Truck Owner/Operator (ITOs) [MnDOT Standard Specifications for Construction, Section 1801].
- b) See Section 9, MndOT Specification 1906 Partial Payments.

(15) IC-134 form - Withholding Affidavit for Contractors

The IC-134 form will be required from all Multiple Truck Operators, Partnerships, and Corporations performing trucking services on a project before the retainage or all remaining funds can be released. Web site for completing form online: www.mndor.state.mn.us

The form, itself, is found at: www.taxes.state.mn.us/forms/ic134.pdf

(16) Owners, Supervisors, Foremen listed on certified payrolls.

All persons working on a City of Duluth project including owners, partners, supervisors, salaried persons, and working foremen who perform laborer and/or mechanic work shall be reported on the weekly certified payroll reports including all data required of any laborer or mechanic. (ordinance 8731, 6/24/85)

(17) Supporting documentation.

At his/her discretion, the City of Duluth Labor Standards representative may demand proof of payment of the prevailing wage which may include copies of a payroll register, itemized time sheet and matching cancelled check, or any other supporting documents as stipulated. Payment to the prime contractor may be withheld until documentation is received and approved.

(18) Kickbacks from Public Works employees prohibited.

No contractor working on a project or other person shall, by force intimidation, or threat of termination of employment, cause any employee working on a project to give up any part of the compensation to which he is entitled under his contract of employment.

Section 9

**Minnesota Department of Transportation Specification 1906 Partial Payments
Process For "Withholding Contract Monies" and "Default and Termination of a Contract" 11/5/04**

Mn/DOT Specification 1906 Partial Payments describes the Commissioner's authority to withhold funds to protect the Department's interests. In addition, Specification 1808 Default and Termination of a Contract describes the Commissioner's authority to take the prosecution of the work out of the hands of the Contractor.

Additionally, on projects funded in whole or part with federal funds and in accordance with the Required Contract Provisions Federal-Aid Construction Contracts Form - 1273, Section IV, Subpart 6, "Withholding", incorporated into federal aid contracts, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds until such violations have ceased.

However, the Department must give the Contractor, and it's Sureties due notice prior to exercising these authorities. The withholding of contract funds, in accordance with Specification 1906 or the Required Contract Provisions Federal-Aid Construction Contracts Form - 1273, Section IV, Subpart 6, "Withholding", should be implemented as soon as a possible prevailing wage violation is recognized. However, Default and Termination of a Contract, in accordance with Specification 1808, should only be exercised as a "last resort" if the Contractor is not willing to comply.

Definitions

(Mn/DOT Standard Specifications for Construction 2000 Edition, Section 1103)

Commissioner: The Commissioner of the Minnesota Department of Transportation, or the chief executive of the department or agency constituted for administration of Contract work with its jurisdiction.

Contractor: The individual, firm or corporation Contracting for and undertaking prosecution of the prescribed work; the party of the second part to the Contract, acting directly or through a duly authorized representative.

Department: The Department of Transportation or the State of Minnesota, or the political subdivision, governmental body, board, commission, office, department, division, or agency constituted for administration of the Contract work within its jurisdiction.

(Form 1273 - 29 CFR, Part 5.1, Definitions)

Contracting Officer: The individual, a duly appointed successor or authorized representative who is designated and authorized to enter into Contracts on behalf of the Federal Agency and/or the City of Duluth.

Important Considerations

Upon completion of the work under a contract, the department should consider issuing the final voucher as soon as possible. Failure to finalize a contract expeditiously could result in subsequent claims that would prevent the department from finalizing the contract. However, before the issuance of the final voucher, the department must be able to ensure that the terms of the contract have been satisfied. Failure on the part of the department to ensure compliance could result in the Mn/DOT state aid division retaining funds from the department in accordance with *Minnesota Rules 8820.3000, subpart 5*.

2. On every contract, the department should withhold the final retainage in accordance with the following guidelines: (1) if the total amount of the contract is \$1,000,000 or more, the department should retain funds not more than \$50,000, (2) if the total amount of the contract is less than \$1,000,000, the department should retain 5% of the total contract, (3) retainage should be withheld until the department can ensure that the contractor has met the terms of the contract or until the finalization of the contract.
3. This guide specifies that the department verbally notify the bonding company early in the process. Generally, as a “rule of thumb”, notifying the bonding company is usually the “last resort”. However, the justification for the early notification is related to the language found in *Minnesota statute 574.31, subdivision 2*, which summarizes that if an individual or the department does not submit a claim on the payment bond within 120 days after the completion of work under the contract, the claim can be denied.

The following are general guidelines that should be followed prior to placing a Contractor in default:

- Step 1: Upon verbal or written notification that a possible prevailing wage violation exists, the Department should give written notice to the Contractor regarding the nature of the claim, along with the Department’s intent to withhold monies until the claim is investigated and determined to be in compliance. Additionally, the Department should inform the Contractor that the bonding company has been verbally notified of the claim. Please be aware, the Department should ensure employee confidentiality at all times.
- Step 2: Upon a preliminary determination surrounding the financial extent of the claim, the Department should consider retaining a “reasonable” portion of one or more partial estimates in accordance with Mn/DOT’s 2000 Standard Specifications for Construction, Section 1906; or on federal aid contracts, in accordance with the Required Contract Provisions Federal-Aid Construction Contracts Form – 1273, Section IV, Subpart 6, “Withholding”.
- Step 3: If it is determined that the claim is valid, the Department should schedule a meeting with the Contractor and attempt to resolve the matter. If the claim is determined to be invalid, the Department should release any partial estimates that may have been held as a result of the claim. However, the Department should continue to withhold the final retainage in accordance with the above-mentioned: *Important Considerations, 2*.
- Step 4: If resolution cannot be obtained through a meeting, the Department should order the Contractor, in writing, to complete their obligations under the contract. The letter should clearly state the circumstances under which the Department has deemed that the Contractor has not met the terms of the contract. Additionally, the Department should include a reasonable deadline for this obligation to be completed. A copy of this letter should be forwarded to the Surety, District State Aid Engineer (DSAE), Labor Compliance Unit and the Department’s Attorney.
- Step 5: In the event that the Contractor does not respond to the Department’s written order, the Department should send a similar letter, requesting that the Contractor respond immediately, in writing, regarding the Contractor’s intention to comply or not comply with the order. A copy of this letter should be forwarded to the Surety, District State Aid Engineer (DSAE), Labor Compliance Unit and the Department’s Attorney.
- Step 6: If the Department still does not get a proper response from the Contractor, the Department should write another letter, addressed to both the Contractor and the Surety, specifying all the facts of the alleged breach, demanding that the Contractor, or its Surety, respond satisfactorily within 10 days or the Department may exercise its authority to Default and Terminate the Contract in accordance with DOT’s 2000 Specifications for Construction, Section 1808. It’s important to provide sufficient detail so that the Surety understands the situation. This notification should be sent by certified mail. A copy of this letter should be forwarded to the Surety, District State Aid Engineer (DSAE), Labor Compliance Unit and the Department’s Attorney.
- Step 7: If the Contractor or Surety is unresponsive after 10 days, the Department should consult with their attorney to consider proceeding with Default and Termination of the Contract.
- Step 8: Upon termination of the contract, the Department provides a written order to the Surety, requiring the Surety to bring resolution to the prevailing wage violation.
- Step 9: The Department places the Contractor on a Non-Responsible Bidder’s List and rejects any future awards.

Section 10
Housing and Urban Development (HUD) form-4010 (07/20/03)
Ref Handbook 1344.1

NOTE: On projects NOT funded by HUD, the words: “contracting officer” or “federal agency” or “the City of Duluth” shall be substituted.

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section I(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section I(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section I(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the

registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. **The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.** (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR 5.5 (a)(3)(i) and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

· HUD/CDBG funded or federally funded projects must use the U S Department of Labor form WH-347 which includes a statement of compliance or use a reasonable facsimile containing identical data; however, a separate itemized list of the fringe benefits must be submitted with each certified payroll. See Forms, Section 14.

· The Minnesota Department of Transportation Statement of Compliance (form 21658 3-01) must be used on all non-HUD/CDBG funded projects including those funded by the City of Duluth. In addition, each certified payroll for all City of Duluth funded projects must clearly indicate the base workweek hours. See Forms, Section 14.

· City of Duluth construction projects funded by the federal government along with the State of Minnesota and/or City of Duluth monies will require both the U S Department of Labor form WH-347 and the Minnesota Department of Transportation Statement of Compliance (form 21658 3-01).

· City of Duluth construction projects funded by HUD/CDBG along with City of Duluth monies will require both the U S Department of Labor form WH-347 and the Minnesota Department of Transportation Statement of Compliance (form 21658 3-01).

(c) The weekly submission of a properly executed certification set forth on the reverse side of Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b) for HUD funded projects only. **NOTE:** The City of Duluth requires a separate itemized list of the fringe benefits along with the benefit plans be submitted with each certified payroll. See Forms, Section 14.

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

· The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program.

· Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

· In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 of this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration.....makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**** See page 5 for number 4-b and c for further definitions.**

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable only where the amount of the prime contract exceeds \$100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 USC 3701 et seq.

(3) The Contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

Section 11

Equal Opportunity Laws and Regulations

(A) In addition to Contract specifications set forth below, the Contractor shall conduct and administer this Contract in compliance with:

- (1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) and implementing regulations issued at 24 CFR Part 1;
- (2) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), as amended, and implementing regulations;
- (3) Section 109 of the Housing and Community Development Act of 1974, as amended; and the regulations issued pursuant thereto (24 CFR Section 570.601);
- (4) Section 3 of the Housing and Urban Development Act of 1968, as amended, and implementing regulations of 24 CFR Part 135;
- (5) Executive Order 11246, as amended by Executive Order 11375 and 12086 and implementing regulations at 41 CFR Chapter 60;
- (6) Executive Order 11063, as amended by Executive Order 12259 and implementing regulations at 24 CFR Part 107;
- (7) Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and implementing regulations when published for effect;
- (8) The Age Discrimination Act of 1975, as amended, (Pub. L. 94-135) and implementing regulations when published for effect;
- (9) The Minnesota Human Rights Act of 1974, as amended (Chapter 363).

Equal Opportunity and Affirmative Action

(A) Contractors and Subcontractors that have a work force in excess of fifty (50) employees and a contract in excess of \$50,000.00 shall prepare and maintain an appropriate affirmative action plan in accordance with the provisions of 41 CFR 60 "Compliance Responsibility for Equal Opportunity".

(B) Non-segregated Facilities. The Contractor shall certify that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The Contractor covenants that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. As used in this paragraph the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, creed, religion, national origin, ancestry, age, marital status, status with respect to public assistance, and/or disability because of habit, local custom, or otherwise.

General Provisions Against Discrimination

(A) In all hiring or employment made possible by or resulting from this Contract, there:

- (1) will not be any discrimination against any employee or applicant for employment because of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, and/or disability.
- (2) affirmative action will be taken to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, and/or disability. This requirement shall apply to, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. There shall be posted in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this clause. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, and/or disability.

(B) No person in the United States shall, on the grounds of race, color, creed, religion, national origin, age, sex, marital status, status with respect to public assistance, and/or disability, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Contract. The Contractor and each employer will comply with all requirements imposed by or pursuant to the regulations of the Federal Agency effectuating Title VI of the Civil Rights Act of 1966. The Contractor will note this requirement in all solicitations or advertisements for employees. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(C) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of the Contractor's commitments under these provisions, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(D) The Contractor hereby agrees that he will incorporate into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained pursuant to this Contract, the equal opportunity clause which is a part of these Contract Documents.

(E) The Contractor further agrees that he will be bound by the equal opportunity clause and other provisions of 41 CFR Chapter 60, with respect to his own employment practices when he participates in federally assisted construction work: **Provided:** That of the Contractor so participating is a State or Local Government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the Contract. Also, the Contractor will make his files available to inspection by appropriate government agencies and shall furnish those reports as may be required by said agencies.

(F) The Contractor agrees that he will assist and cooperate actively with the Federal Agency and the Secretary of Labor in obtaining the compliance of subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that he will furnish the Federal Agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that he will otherwise assist the Federal Agency in the discharge of its primary responsibility for securing compliance.

(G) The Contractor further agrees that he will refrain from entering into any contract or any contract modification subject to Executive Order 11246 of September 24, 1965, with a subcontractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order. In addition, the Contractor agrees that if he fails or refuses to comply with these undertakings, the City or the Federal Agency may take any or all of the following actions: Terminate or suspend in whole or in part this Contract; refrain from extending any further assistance to the Contractor under the Project with respect to which the failure or

refusal occurred until satisfactory assurance of future compliance has been received from such Contractor and refer the case to the Department of Justice for appropriate legal proceedings.

Affirmative Action - "Construction Contracts" over \$10,000

Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity
(Executive Order 11246)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

<u>Timetables</u>	<u>Goals for minority participation (percent)</u>	<u>Goals for female participation (percent)</u>
From April 1, 1980 until revised	3.0	6.9

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3 (a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the City and to the Director of the Office of Federal Contract Compliance Programs; U.S. Department of Labor, ESA/OFCCP, 16th Floor, 230 South Dearborn Street, Chicago, Illinois, 60604, within 10 working days of award of any construction subcontract and/or subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the contractor and/or subcontractor; employer identification number; estimated dollar amount of the prime contract; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this Notice, and in the Contract, the "covered area" is all work under a contract currently held with the City of Duluth, Minnesota.

**Standard Federal Equal Employment Opportunity
Construction Contract Specifications (Executive Order 11246)**

I. As used in these specifications:

- a) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor; or any person to whom the Director delegates authority;
- b) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- c) "Minority" includes:
 - Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should

reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notices of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitments and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of officers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, creed, religion, national origin, sex, ancestry, age, marital status, status with respect to public assistance and/or disability.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

Affirmative Action for Handicapped Workers

(applies to contracts in excess of \$2,500)

(A) The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: Employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(B) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(C) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.

(D) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

(E) The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

(F) The Contractor will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era

(applies to contracts in excess of \$10,000)

(A) The Contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans status in all employment practices such as the following: Employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(B) The Contractor agrees that all suitable employment openings of the Contractor which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the Contractor other than the one wherein the contract is being performed but excluding those of independently operated corporate affiliates, shall be listed at an appropriate local office of the State employment service system wherein the opening occurs. The Contractor further agrees to provide such reports to such local office regarding employment openings and hires as may be required. State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service, but are not required to provide those reports set forth in paragraphs (D) and (E).

(C) Listing of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and non-veterans. The listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants, and nothing herein is intended to relieve the Contractor from any requirements in Executive Orders of regulations regarding nondiscrimination in employment.

(D) The reports required by paragraph (B) of this clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the Contractor has more than hiring location in a State, with the central office of that State employment service. Such reports shall indicate for each hiring location (1) the number of individuals hired during the reporting period, (2) the number of non-disabled veterans of the Vietnam era hired, (3) the number of disabled veterans of the Vietnam era hired, and (4) the total number of disabled veterans hired. The reports should include covered veterans hired for on-the-job training under 38 U.S.C. 1787. The Contractor shall maintain at each hiring location copies of the reports submitted until the expiration of one year after final payment under the contract, during which time these

reports and related documentation shall be made available, upon request, for examination by any authorized representatives of the contracting officer of the Secretary of Labor. Documentation would include personnel records respecting job openings, recruitment and placement.

(E) Whenever the Contractor becomes contractually bound to the listing provisions of this clause, it shall advise the employment service system in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these provisions, and has so advised the State system, there is no need to advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(F) This clause does not apply to the listing of employment openings which occur and are filled outside of the 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(G) The provisions of paragraphs (B), (C), (D), and (E) of this clause do not apply to openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement for that opening.

(H) As used in this clause:

(1) "All suitable employment openings" includes, but is not limited to, openings which occur in the following job categories: Production and non-production; plant and office; laborers and mechanics; supervisory and non-supervisory; technical; and executive, administrative, and professional openings as are compensated on a salary basis of less than \$25,000 per year. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment. It does not include openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement nor openings in an educational institution which are restricted to students of that institution. Under the most compelling circumstances an employment opening may not be suitable for listing, including such situations where the needs of the Government cannot reasonably be otherwise supplied, where listing would be contrary to national security, or where the requirement of listing would otherwise not be for the best interest of the Government.

(2) "Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

(3) "Openings which the Contractor proposes to fill from within his own organization" means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) and includes any openings which the Contractor proposes to fill from regularly established "recall" lists.

(4) "Openings which the Contractor proposes to fill pursuant to a customary and traditional employer-union hiring arrangement" means employment openings which the Contractor proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between the Contractor and representatives of his employees.

(I) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(J) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.

(K) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era for employment, and the rights of applicants and employees.

(L) The Contractor will notify each labor union representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Vietnam Era Veterans Readjustment Assistance Act, and is committed to take affirmative action to employ and advance qualified disabled veterans and veterans of the Vietnam era.

(M) The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

Section 12

Employment Opportunities - "HUD Section 3"

General

These requirements apply to the City of Duluth contracts receiving assistance under the U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) Program.

Type of Covered Projects

24CFR570.607 (b) of the HUD CDBG Program Regulations state in part "... that employment and other economic opportunities arising in connection with housing rehabilitation, housing construction, or other public construction projects shall to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations be given to low- and very low-income persons.

Thresholds

In accordance with the provisions of 24CFR135.3(a) (3) (ii) (A), the requirements of this Section apply to those recipients as defined at 24CFR135.5 when the amount of this contract exceeds \$200,000.

In addition, in accordance with the provisions of 24CFR135.3 (a) (3) (ii) (B), the requirements of this Section apply to any contractor or subcontractor whose contract exceeds \$100,000 as a result of assistance provided under this contract.

Requirements (Section 3 Clause)

(A) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(B) The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

(C) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement, or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(D) The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

(E) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligation under 24 CFR part 135.

(F) Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD-assisted contracts.

Section 13

Federal Requirements for Minority/Women Business Enterprises Contract Guidance - MPFA

General

Municipalities that receive loan funding must comply with Federal requirements concerning utilization of Minority Business Enterprises (MBE) and Women's Business Enterprises (WBE). These requirements are designed to encourage the prime contractors to utilize MBEs and WBEs whenever procurement opportunities occur.

Regulation

40 C.F.R. Section 35.3145(d) Application of other Federal Authorities, M/WBE Requirements

Executive Orders No. 11625, 12138 and 12432 - Promoting the use of M/WBEs

Section 129 of Public Law 100-590 - Small Business Administration Reauthorization and Amendment Act of 1988

Regulations detailed in the EPA's *Cross-Cutting Federal Authorities - Clean Water Act State Revolving Fund Program and Safe Drinking Water Act State Revolving Fund Program*

Implementation

The "fair share" target percentage participation proposed for this project is 3.5 percent (3.5%) for MBE and 11.5 percent (11.5%) for WBE.

If the Contractor intends to let any subcontractors for a portion of the work, the Contractor shall take affirmative steps to assure that minority and women businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

- a) Include qualified minority businesses on solicitation lists.
- b) Assure that minority businesses are solicited whenever they are potential sources.
- c) When economically feasible, divide total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.
- d) Where the requirement permits, establish delivery schedules, which will encourage participation by minority businesses.
- e) Use the services and assistance of the Office of Minority Business Enterprise of the Department of Commerce.

The low bidder will be required to submit to the City of Duluth documentation of his good faith efforts to meet the targeted goals of utilizing MBEs and WBEs.

Section 14 - Forms

Construction Type: **Building**

County: St Louis County in Minnesota.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Mod Nbr	Publ Date	Mod Nbr	Publ Date	Mod Nbr	Publ Date	Mod Nbr	Publ Date	Mod Nbr	Publ Date	Mod Nbr	Publ Date
0	03/12/2010	4	08/06/2010								
1	05/07/2010										
2	06/04/2010										
3	07/02/2010										

* ASBE0049-007 06/01/2010 **ASBESTOS WORKER/HEAT & FROST INSULATOR (includes the application of all insulating materials, protective coverings, coatings & finishes to all types of mechanical systems)** Rate Fringe
 \$ 26.82 21.80

BOIL0647-007 07/01/2009 **BOILERMAKER** \$ 33.84 18.53

BRMN0001-050 05/01/2009 ST LOUIS CO (remaining northern part) Tile Setter \$ 30.58 17.95

BRMN0003-008 05/01/2009 **ST. LOUIS CO (city of Duluth and south of a line between Townships #54 & #55, 2 miles north of Cotton)**
BRICKLAYER \$ 30.29 17.95

BRMN0003-011 05/01/2008 **ST. LOUIS CO (city of Duluth and south of Township Line 55)** Rate Fringe
TILE SETTER \$ 24.13 17.38

* BRMN0016-002 05/01/2009 ST. LOUIS CO (north of a line between Townships #54 & #55, 2 miles north of Cotton) Bricklayer \$ 30.04 18.20

CARP0361-012 08/10/2009 **DULUTH AREA** including Alborn, Arnold, Bartlett, Birch, Brookstone, Canyon, Clinton, Culver, Floodwood, Gowan, Island, Kelsey, Lakewood, Meadowlands, Munger, Palmers, Payne, Prasit, Shaw, Taft) Rate Fringe
CARPENTER (including Acoustical Installation, Drywall Hanging, Form Work, & Overhead Door Installation) \$ 26.40 13.80

CARP0596-005 06/01/2009 **SOFT FLOOR LAYER** Rate Fringe
 \$ 28.91 12.63

CARP0606-001 06/01/2009 Excluding Duluth Area
CARPENTER (including Acoustical Installation, Drywall Hanging, Form Work & Overhead Door Installation) \$ 25.75 12.69

* ELEC0242-012 05/30/2010 ST. LOUIS (south part bounded on the north by the north line of Kelsey Township extended east & west)
ELECTRICIAN \$ 31.24 66.55%

* ELEC0294-006 06/01/2010 ST. LOUIS (north part bounded on the south by the south line of Ellsburg Township, extended east & west)
 Electrician \$ 33.62 58.75%

ENGI0049-045 05/01/2009 **POWER EQUIPMENT OPERATOR**
 GRP 1 \$ 34.64 15.25 GRP 3 \$ 32.89 15.25 GRP 5 \$ 32.38 15.25 GRP 7 \$ 29.75 15.25
 GRP 2 \$ 34.30 15.25 GRP 4 \$ 32.55 15.25 GRP 6 \$ 30.87 15.25 GRP 8 \$ 27.74 15.25

Power Equipment Operator Classifications:

- GROUP 1:** Truck & Crawler Crane with 200' of Boom & over, including Jib (\$.50 premium with 300' of Boom & over, including jib); & Tower Crane 250' & over.
- GROUP 2:** Truck & Crawler Crane with 150' of Boom, up to but not including 200' of Boom including Jib; & Tower Crane 200' & over.
- GROUP 3:** Traveling Tower Crane; Truck & Crawler Crane, up to but not including 150' of Boom, including Jib; Tower Crane (Stationary) up to 200'; All-Terrain Vehicle Crane, Boom Truck over 100 ft.
- GROUP 4:** Backhoe/Track/Trackhoe, Hoist (3 drums or more); Overhead Crane (inside building perimeter), Excavator.
- GROUP 5:** Asphalt Spreader, Bulldozer, Curb Machine, Drill, Forklift, Compressor 450 CFM or over (2 or more machines); Boom Truck up to 100 ft, Loader over 1 cu yd, Hoist (1 or 2 drums); Mechanic; Milling Machine, Roller, Scraper, Tractor over D2.
- GROUP 6:** Bobcat/Skid Loader, Loader up to 1 cu. yd., Tractor D2 or similar size.
- GROUP 7:** Compressor 600 CFM or over, Crane Oiler.
- GROUP 8:** Oiler

IRON0512-018 05/01/2009 **IRONWORKER, ORNAMENTAL, REINFORCING & STRUCTURAL** Rate Fringe
 \$ 29.76 19.50

LABO1091-011 01/01/2009 **LABORER (ASBESTOS ABATEMENT) Removal from Floors, Walls & Ceilings** Rate Fringe
 \$ 27.65 11.11

LABO1091-013 05/01/2009 **ST. LOUIS CO (south of T 55 N)**

LABORERS:
 GRP 1 \$ 23.45 11.24 GRP 2 \$ 23.60 11.24 GRP 3 \$ 23.85 11.24 GRP 4 \$ 24.15 11.24

LABORER CLASSIFICATIONS:

- GRP 1:** Common or General, Asphalt Shoveler, Carpenter Tender, Form Stripping
- GRP 2:** Vibrating Plate
- GRP 3:** Pipelayer
- GRP 4:** Mason Tender (Brick, Cement/Concrete)

LABO1097-008 05/01/2009 ST. LOUIS CO (north of T 55N) Laborer: GRP 1 \$ 22.91 11.87 GRP 2 \$ 23.31 11.87

LABORERS CLASSIFICATIONS: GRP 1 - Common or General, Asphalt Shoveler, Carpenter Tender, Form Stripping, Mason Tender (Brick, Cement/Concrete)
 GRP 2 - Pipelayer, Vibrating Plate

PAIN0106-001 05/01/2010 **GLAZIER** \$ 24.85 14.60 FOOTNOTE: 1 to 4 yrs svc - 1 wk pd vac; 5 to 11 yrs - 2 wks pd vac; 11 yrs or more - 3 wks pd vac

* PAIN0106-013 05/01/2010 Rate Fringe Rate Fringe
PAINTERS: New: Brush, Roller \$ 27.30 14.08 Repaint: Brush, Roller \$ 25.80 14.08
 Spray, Drywall Finisher/Taper \$ 27.90 14.08 Spray, Drywall Finisher/Taper \$ 26.40 14.08

			<u>Rate</u>	<u>Fringe</u>
PLAS0633-024	10/01/2009	ST. LOUIS CO (north of White Face River)	Cement Mason/Concrete Finisher	\$ 24.31 14.34
PLAS0633-059	05/01/2009	CARLTON & ST. LOUIS COs (south of T 55N)	CEMENT MASON/CONCRETE FINISHER	\$ 27.04 15.45
* PLUM0011-019	05/03/2010	ST. LOUIS (south of an east-west line drawn through Cotton)	PLUMBER/PIPEFITTER	\$ 35.60 16.25
* PLUM0589-007	05/01/2010	ST. LOUIS (north of an east- west line drawn through Cotton)	Plumber/Pipefitter	\$ 35.74 15.77
ROOF0096-024	07/06/2009	ST. LOUIS CO (south of Hwy 16, excluding city of Forbes)	ROOFER	\$ 29.20 13.20
* ROOF0096-025	05/01/2010	ST. LOUIS (remaining northern two-thirds)	Roofer	\$ 26.50 9.95
SHEE0010-045	05/01/2009	ST. LOUIS CO (southern one-third)	SHEET METAL WORKER (including HVAC Duct Installation)	\$ 31.61 16.52
SHEE0010-056	05/01/2008	ST. LOUIS CO (northern two-thirds)	SHEET METAL WORKER (including HVAC Duct Installation)	\$ 29.99 16.08
SUMN2009-050	07/27/2009			
LABORER: Landscape			\$ 12.88	4.61
TRUCK DRIVER: Dump Truck			\$ 19.15	5.70

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

- 1) Has there been an initial decision in the matter? This can be: * an existing published wage determination * a survey underlying a wage determination * a Wage and Hour Division letter setting forth a position on a wage determination matter * a conformance (additional classification and rate) ruling
On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2. and 3) should be followed.
With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to: Branch of Construction Wage Determinations Wage and Hour Division U.S. Department of Labor 200 Constitution Avenue, N.W. Washington, DC 20210
- 2) If the answer to the question in 1) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to: Wage and Hour Administrator U.S. Department of Labor 200 Constitution Avenue, N.W. Washington, DC 20210
- The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.
- 3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to: Administrative Review Board U.S. Department of Labor 200 Constitution Avenue, N.W. Washington, DC 20210
- 4) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

SPECIAL CONDITIONS

1) PROJECT

The project consists of removing existing paving, partial sub-base, repaving, and related work at Fire Hall #1, Fire Hall #4, and Fire Hall #7.

2) ARCHITECT

The 'Architect of Record' for this project is: City Architect – City of Duluth
1532 West Michigan Street, Duluth, MN 55806
Phone: 218-730-5730 Fax: 218-723-3560

Terry Groshong, AIA - City Architect, 1532 West Michigan Street, Duluth, MN.
Phone: 218-730-5730 Fax: 218-723-3560 Email: tgroshong@duluthmn.gov

The term Architect refers to: City Architect.

3) BIDS

Bidders are to fill in all blanks on the proposal form. See Article 5 and 13, of the instruction to bidders, for additional information

4) SPECIAL CONDITIONS

The Articles of the Special Conditions shall modify or supplement the provisions contained in the General Conditions of the contract for construction and the Supplementary General Conditions.

5) EXAMINATION OF THE SITE

Before submitting a proposal, each bidder shall visit and examine the sites, and fully inform himself as to the existing conditions under which he will be obliged to operate in performing his part of the work, or which will in any manner affect his work under this contract. He shall include in his proposal any and all sums required to execute his work under existing conditions.

6) DRAWINGS AND SPECIFICATIONS

The Table of Contents contains a list of all specification divisions and drawing numbers included in the contract documents, and each contractor is governed by the information contained on or in all of the plans and specifications.

7) COMPLETION TIME & LIQUIDATED DAMAGES

The schedule calls for work to begin upon receipt of Notice to Proceed and to be substantially complete within 60 *calender days*. It is assumed by receipt of this bid that the contractor can meet this schedule. As actual damages for any delay in completion of the work which the contractor is required to perform under this contract are impossible to determine, the contractor and his sureties shall pay to the City of Duluth the sum of **Five Hundred Dollars (\$500.00)** as fixed, agreed, and liquidated damages for each calendar day of delay from the above stipulated for completion, or as modified in accordance with Section 111 hereof, until such work is satisfactorily completed and accepted.

8) RESPONSIBILITIES OF CONTRACTOR

Except as otherwise specifically stated in the contract documents and technical specifications, the prime contractor shall provide and pay for all materials, labor, tools, equipment, water, light, heat, power, transportation, superintendence, temporary construction of every nature, charges, levies, fees, or other expenses and all other services and facilities of every nature whatsoever necessary for the performance of the contract, and to deliver all improvements embraced in this contract for site preparation complete in every respect within the specified time.

9) PARTIAL USE OF IMPROVEMENTS

The City, at its election, may give notice to the contractor(s) and place in use those sections of the improvements which have been completed, inspected, and can be accepted as complying with the technical specifications, and if in its opinion each such section is reasonably safe, fit, and convenient, for the use and accommodation for which it was intended, provided:

- a. The use of such sections of the improvements shall in no way impede the completion of the remainder of the work by the contractor.
- b. The contractor shall not be responsible for any damages or maintenance costs due directly to the use of such sections.
- c. The use of such sections shall in no way relieve the contractor of his liability due to having used defective materials or to poor workmanship.
- d. The guarantee stipulated in the Section 132 hereof shall not begin to run until the date of the final acceptance of all work which the contractor is required to construct under this contract. All work under the contract shall be guaranteed for a period of one (1) year from the date of final acceptance.

10) COMMUNICATIONS

- a. All notices, demands, requests, instructions, approvals, and claims must be in writing addressed to the Office of the City Architect, Attn: Terry Groshong, 1532 West Michigan Street, Duluth, Minnesota 55806. Any notice to or demand upon the contractor shall be sufficiently given if delivered at the office of the contractor, stated on the signature page of the agreement (at such other office as the contractor may from time

to time designate in writing to the City), or if deposited in the United States mail in a sealed, postage-prepaid envelope, or delivered with charges prepaid to any telegraph company for transmission, in each case addressed to such office.

- b. All papers required to be delivered to the City shall, unless otherwise specified, in writing to the contractor, be delivered to the City of Duluth, and any notice to or demand upon the City shall be sufficiently given if so delivered, or if deposited in the United States mail in a sealed, postage-prepaid envelope, or delivered with charges prepaid to any telegraph company for transmission to said City at such address, or to such other address as the City may subsequently specify in writing to the contractor for such purpose.
- c. Any such notice shall be deemed to have been given as of the time of actual delivery of (in the case of mailing when the same should have been received in due course of post, or in the case of telegrams, at the time of actual receipt as the case may be).
- d. This section does not apply to decisions given pursuant to Section 113(b) of this contract.
- e. The contractor(s) shall designate in writing at the time of execution of the contract the name of its(their) duly authorized representative(s) with whom the owner may transmit all business in connection with the operation of this contract.

11) CONTRACT DOCUMENTS AND DRAWINGS

The City will furnish each contractor without charge six (6) copies of the contract documents, including technical specifications and drawings. Additional copies requested by the contractor will be furnished at cost.

12) PERMITS

- a. Shall be added to General Conditions as follows: Required permits will be secured and paid for by the prime contractor.
- b. (SUPPLEMENT TO INSTRUCTIONS TO BIDDERS) All work and materials are to comply in every respect with the Building Code and all associated laws and ordinances, regulations, and the directions of the inspectors of buildings and other proper officials of the area in which the building is to be constructed. Such laws, regulations, and directions are to be considered as part of this specification. If the contractor performs any work knowing it to be contrary to such laws, ordinances, rules, and regulations, and without notice to the architect, he shall bear the cost arising there from.

13) CUTTING AND PATCHING

Shall be added to Section 105 of the General Conditions as follows: Costs for cutting and patching required by the contractor and subcontractors shall be included in the bid proposal of the contractor.

Patching shall be by qualified workmen, coordinated and supervised by the prime contractor and indistinguishable from surrounding surfaces.

14) INSURANCE

Section 129 of the General Conditions shall be added to as follows:

- a. "Property Insurance" shall be changed as follows: Builders Risk to be provided by the prime contractor(s) on a "Multi-Peril-All-Risk" basis, which includes theft of material not installed and glass breakage. Contractor(s) is(are) liable for losses within deductible coverage.
- b. Indemnification Insurance: In addition to any indemnification required under Section 4.18, the contractor shall purchase insurance as provided in Minnesota Statutes Section 337.05, as most recently amended, for the benefit of the Owner and the Architect and their agents and employees, which shall compensate them from any loss due to all claims, damages, losses, and expenses, including a minimum coverage of not less than \$2.5 million per claim and \$5 million per occurrence plus an appropriate amount of property damage for the size of the project. Copies of the contract of insurance shall be provided to the Owner and Architect and shall name these parties as insured. (NOTE: On projects of less than \$1 million estimated construction cost, this does not apply.)

15) LINES AND LEVELS

Shall be added to the General Conditions as follows:

Before starting work, locate all general reference points. Take such steps as necessary to prevent their dislocation or destruction. If disturbed or destroyed, replace as directed. Prime contractor shall lay out work, and he is responsible for its accuracy. Coordinate with City Architect.

16) CONDITIONS OF SURFACES

Shall be added to the General Conditions as follows:

Each subcontractor shall inspect the surfaces over which his work will be installed prior to his starting work. Each subcontractor shall present notice of unacceptable surfaces to the prime contractor, who shall correct same in manner acceptable to City Architect. Subcontractor's start of work denotes his acceptance of surfaces and places responsibility for acceptable final results on himself as well as the prime contractor.

17) TEMPORARY SERVICES

- a. WATER-- Water for construction use will be provided by the owner. All water shall be conserved, and spillage cleaned by the contractor at fault. All hoses shall be the contractor's responsibility.
- b. TEMPORARY POWER-- Temporary power will be furnished by the owner for small hand tools and temporary lights. Each contractor will be responsible for running all his extension

cords as needed. No heavy electrical equipment or welders will be allowed. Misuse of this convenience will be cause to void the privilege.

- c. TEMPORARY HEAT-- The prime contractor shall provide temporary heat (if required) as specified in the technical sections.
- d. TEMPORARY ENCLOSURES-- The prime contractor shall be responsible for temporary enclosures. The temporary enclosures shall keep out all the elements, maintain temporary heat and/or building heat, and shall maintain the building security.
- e. TOILETS-- Owner will designate which may be used by all contractors, provided they are kept clean by the workmen. Cleanup shall be the responsibility of the prime contractor.
- f. TEMPORARY STORAGE-- Each contractor shall be responsible for the temporary storage of his own material.

18) BAILING AND PUMPING

Any required bailing and pumping shall be the responsibility of the individual contractor to complete his work.

19) HOISTS AND SCAFFOLDING

All hoists and scaffolding shall be provided by each contractor for his own work.

20) SHOP DRAWINGS

Add to Section 115 of General Conditions as follows:

Furnish four (4) copies of shop drawings. The drawings shall be 8 1/2 x 11, or foldable to that size, to facilitate filing. After folding, the title block shall be clearly visible indicating: (1) the drawing subject matter; (2) the name of the submitting firm; (3) date; and (4) specification section.

Submit the shop drawings to the City or the Architect through the prime contractor. Do not submit directly to the City, the Architect, or his consultants.

21) WARRANTY OF TITLE

Section 131 of the General Conditions shall be added to as follows:

The beginning of the warranty period relating to faulty materials and workmanship will be established by the final acceptance of the project by the owner. The necessity of partial occupancy of an uncompleted structure by the owner will not alter the warranty period herein defined.

22) STATE SALES TAX

If contractors are required to pay a sales tax for material purchased by them and such material is entirely included in the work under contract, contractors shall include the sales tax in their proposal.

23) REGULATIONS: All work and materials shall conform strictly to the respective requirements of the latest editions of the following:

- a. Rules of the National Board of Fire Underwriters.
- b. Standard Specifications of the American Society of Testing Materials.
- c. State Industrial Commissions.
- d. Local ordinances and codes.
- e. State laws of Minnesota.
- f. Minnesota State Board of Health.
- g. Underwriters Laboratories.
- h. Occupational Safety and Health Administration.

Any conflict between the above or with these specifications must be submitted to the City Architect in writing before proceeding with the work.

24) CHANGES IN THE WORK (NEW LANGUAGE)
(See Section 109 of the General Conditions, items d-2 & d-3.)

25) ADDITIONAL CONDITION FOR FINAL PAYMENT
(Further amends General Conditions Item 108, Paragraph 2)

The contractor and all of its subcontractors shall comply with Minnesota Statutes, Section 290.92. Pursuant to Minnesota Statutes, Section 290.97, the owner will not issue final payment to the contractor prior to receipt of an "Affidavit for Obtaining Final Settlement of Contractor with the State of Minnesota and Any of Its Political or Governmental Subdivisions" (Form IC-134) from the contractor and from each of the contractor's subcontractors (if any). The contractor and subcontractors shall submit to the owner original copies of Form IC-134 already fully executed by the Commissioner of Revenue of the State of Minnesota. It shall be the responsibility of the contractor to ensure that all of the affidavits herein required are submitted to the owner. (A sample of Form IC-134 is attached to these Special Conditions; a copy is included in the pre-construction packet given to contractor.)

26) ONE-CALL EXCAVATION NOTICE SYSTEM

The contractor and all of its subcontractors shall comply with Minnesota Statutes Chapter 216D., the Minnesota One-Call Excavation Notice System, if "excavation" as defined in Minnesota Statutes 216D.01., Subdivision 1., is to be performed as a part of this contract. (One-Call contact number: 1-800-252-1166)

27) SAFETY

Section 120 of the General Conditions shall be added to as follows:

- I. **OSHA 500 (10-hour Construction Safety Course) Certification:** The prime contractor's superintendent or management representative **on site** must be certified in an OSHA 500 10-hour Construction Safety Course. Cards must be immediately available for review.

II. Written Safety and Health Program: A comprehensive Written Safety and Health Program must be supplied to the City Purchasing Office prior to any bid considerations. The written program must address, as a minimum, the following items:

A. **General Requirements:** The contractor will assume the entire responsibility for overall job site safety; however, this does not exclude other subcontractors from the safety responsibility with respect to their portion of the work. Any portion of the Safety and Health requirements provided for by the contractor or their subcontractors may relieve the **other contractors** of the actual, but not legal, responsibility for compliance with all applicable safety requirements. An example of this is, temporary GFCI equipped power supply, sanitary facilities, first aid, etc.

B. **Accident Prevention Responsibilities:** All successful bidders will submit a comprehensive written workplace accident and injury reduction program (AWAIR), outlining the scope of the program: the responsibilities of managers, supervisors, and employees for the implementation, maintenance, evaluation of the program, and how safe work practices and rules will be enforced. The contents of the above mentioned program will include provisions for first-aid services and emergency medical attention in case of injury. It will stress clearly acceptable work practices and rules of conduct, both general and site specific, that will be in place throughout the duration of the contract in terms of conditions of employment and outline a progressive disciplinary program for non-compliance.

It will also provide for employee training in Haz-com, Confined Space Entry, Lockout/Tagout, Respirator Protection, and other areas where necessary in categories of initial hire, remedial or annual upgrade. Records of all such training will be kept stating subject area, date presented, how was it presented, who presented the training, and to whom was it presented. Employees will certify receipt of all such training in their permanent file. Such a program shall also provide for frequent and regular inspections of the job site, materials, and equipment to be made by a competent person designated by the employer to ensure compliance.

C. **Engineering Controls:** This will be the primary means of hazard abatement. ONLY when this is not feasible will PPE be considered. Such controls will include, but not be limited to:

Traffic Control: Employees exposed to vehicular traffic will be protected by suitable traffic control devices as stated in the Field Manual (dated April 1995) of the Minnesota Manual on Uniform Traffic Control Devices, and shall be provided with, and shall wear, warning vests or other suitable garments marked with, or made of, reflectorized high-visibility material.

Fall Protection: Guarding of all open sided floors, wall openings, platforms, floor openings, etc., anything that presents a fall hazard to the employees as specified in walking - working surfaces, scaffolding, and steel erection standards. This includes falls from different elevations as well as falls from the same elevation.

Fall Protection Program: The employer shall provide a training program for each employee who might be exposed to fall hazards to be given by a COMPETENT PERSON. It shall follow the criteria stated in 1926.503(a)(1) with provisions made for written certification upon completion. Retraining will be provided as stated in 1926.503(c).

Fall Protection Plan: This option is available only to employees engaged in leading edge work, pre-case concrete erection work, or residential construction work, etc., and who can demonstrate that it is infeasible or it creates a greater hazard to use conventional fall protection equipment. This plan MUST conform to the provisions outlined in 1926.502(k)(1-10) and will be maintained up to date.

Excavations: This section applies to all work done in all open excavations made in the earth's surface. Excavations are defined to include trenching operations made for whatever reason (e.g., utility placement, footings and foundations for buildings, etc.) and will be performed in compliance with CFR Part 1926.651 and 652 under the direct supervision of a COMPETENT PERSON as defined in CFR Part 1926.650(b).

Before any digging is done!!! Gopher State ONE-CALL (1-800-252-1166) must be called at least 48 hours in advance to insure the inventory of underground utilities (e.g., sewer, water lines, telephone, fuel, electric, etc.). Utility companies must be notified that work is to be done and you need to know the exact location of underground lines, pipes, cables, etc. If the utility company has not responded within 24 hours, or if the exact location cannot be determined, you will then proceed with caution, using detection equipment or other acceptable means to locate underground utility installations.

Backup Alarms: All bi-directional motorized equipment with an obstructed view to the rear will be provided with a reverse signal alarm distinguishable from the surrounding noise level, or with signaling employee, or both.

Electrical Safety: The use of ground fault circuit interrupters, or an assured equipment grounding conductor program is mandatory for use with all electrical powered electrical equipment on the construction site. Those electing to use the assured equipment grounding conductor program will coordinate their colors with the existing job site plan. An extension cord is not part of a permanent wiring system and will not comply with the provisions stated above. Cranes, backhoes, scaffolding, etc., will maintain a 10-ft. clearance from energized conductors at all times.

- D. Other Safety Requirements: All appropriate personal protective equipment such as head, eye, ear, and respirator protection shall be used in all operations where there is the probability of over-exposure to hazardous substances, harmful physical agents, and hazardous conditions not feasibly corrected by engineering controls.

Such use of personal protective equipment will be accompanied by relevant training programs; hearing conservation programs when appropriate; and respirator protection programs for all employees required to use such equipment.

Where a hazardous condition as defined by Minnesota Rule 5205.1010 exists, or can be reasonably expected to exist, the requirements of a formal Confined Space Entry Program is mandatory. The contractor must show proof of the existence of such a program prior to start of such work.

All equipment, vehicles, tools, and other equipment used on the work site will be in safe operation, and operated within the parameters stated by the applicable subpart.

- E. Specific Site Safety Requirements: The proposed work, and/or site, will be analyzed to identify site specific safety hazards, and an operational plan to include specific employee training will be required of all successful bidders.

The above mentioned items do not preclude compliance with any and all other applicable sections of CFR Part 1926, and all other standards and rules establishing safe working practices for construction. A current copy of 29 CFR Part 1926 will be on site at all times during the contract, as well as other specially required programs such as Right-to-Know, Confined Space Entry, etc., which will be used to reference safety problems.

NOTE: The contractors' written safety and health program must meet the requirements of the attached checklist. Any member hiring a contractor through this program will be responsible for evaluating and approving the contractors written safety and health program.

28) SUPERINTENDENT

The contractor shall at all times during the progress of the work keep a competent satisfactory superintendent or foreman who shall have the authority to receive instructions from the architect.

29) NO SMOKING

City of Duluth Buildings are non-smoking areas, no smoking will be allowed in the building.

30) SUBSTITUTIONS

Substitutions will only be accepted for bid, if they are submitted in writing with supporting information to the architect at least 7 days prior to the bid closing date. All substitutions must be approved by the architect or owner. The request shall include a self-addressed stamped envelope for response. **SUBSTITUTIONS BY FAX WILL NOT BE ALLOWED.**

31) U. L. LABEL

Where applicable all materials and equipment, for which Underwriter's Laboratories, Inc. standards have been established, and their label service available, shall bear the appropriate U. L. Label.

32) RESTRICTED ACCESS

- a. Contractor shall use, and maintain in clean condition the site and building access route as approved by Owner. No other accesses shall be used for vehicle or man.
- b. Contractor and all other persons connected to this project use parking areas designated by the Owner.
- c. Contractor and workmen shall not trespass into areas beyond those required to accomplish the work.
- d. Contractor to make sure that his operations do not compromise building safety.

33) GUARANTEES AND WARRANTIES

Contractor shall be made responsible for proper installation of all items in his contract and shall remedy, free of charge, any defects in material and workmanship and repair all damage resulting, for a period of one year from the date of final acceptance. All systems shall be in operation prior to acceptance.

34) ADDENDA

Addenda will be mailed or delivered to all who are known by the architect or City to have received a complete set of bidding documents. Each bidder shall be required to acknowledge receipt of addenda on the proposal forms.

35) CLEANING UP

- a. Contractor must comply at all times with the General Condition requirements.
- b. Contractor shall at all times keep the premises free from accumulation of waste materials caused by his operation. At the completion of the work, he shall remove all his waste materials from the project as well as his tools, construction equipment and surplus materials and leave the work "Broom Clean" or its equivalent. Contractor shall restore and replace in a suitable manner all property both public and private which has been damaged or removed in the performance of this contract. The site of the work is meant to include portions of any and all buildings or structures and adjacent portions of any streets, alleys, lawns, sidewalks, driveways, or property used in executing the work.
- c. If the contractor fails to clean up, the Owner may do so and the cost thereof charged to the Contractor.

SECTION 00700

GENERAL CONDITIONS

The General Conditions of the Contract for the Construction of Buildings of the American Institute of Architects, AIA Document A201, 1997 Edition, is hereby made a part of these specifications and these contract documents to the same extent as if bound herein. Copies are on file with the Owner and Architect.

However; where statements are in conflict, those under "Information for Bidders" and those contained in the following "Supplementary General Conditions and Special Conditions" shall take precedence over the General Conditions (AIA Document A201).

SECTION 01010

SUMMARY OF WORK

Work includes:

- Removing existing paving, partial sub-base, repaving and related work.
- Correct construction area grade to reflect existing conditions.
- Restore construction and paving area grades, slopes and sod to reflect existing conditions.

SECTION 01025

MEASUREMENT AND PAYMENT

PART 1 - GENERAL

1.1 SECTION INCLUDES

- A. Measurement and payment criteria applicable to portions of the Work performed under a unit price payment method.
- B. Defect assessment and non-payment for rejected work.

1.2 AUTHORITY

- A. Measurement methods delineated in the individual specification sections are intended to complement the criteria of this section.
- B. Take all measurements and compute quantities. Architect will verify measurements and quantities.

1.3 UNIT QUANTITIES SPECIFIED

- A. Quantities and measurements where indicated in the bid form or individual specification sections, are for bidding and contract purposes only. Quantities and measurements supplied or placed in the Work and verified by the Architect/Engineer shall determine payment.
- B. If the actual Work requires more or fewer quantities than those quantities indicated, provide the required quantities at the unit sum/prices contracted.

1.4 PAYMENT

- A. Payment Includes: Full compensation for all required labor, Products, tools, equipment, plant, transportation, services and incidentals; erection, application or installation of an item of the Work; overhead and profit.
- B. Final payment for Work governed by unit prices will be made on the basis of the actual measurements and quantities accepted by the A/E multiplied by the unit sum/price for Work which is incorporated in or made necessary by the Work.

1.5 NON-PAYMENT FOR REJECTED PRODUCTS

- A. Payment will not be made for any of the following:
 - 1. Products wasted or disposed of in a manner that is not acceptable.
 - 2. Products determined as unacceptable before or after placement.
 - 3. Products not completely unloaded from the transporting vehicle.
 - 4. Products placed beyond the lines and levels of the required Work.
 - 5. Products remaining on hand after completion of the Work.
 - 6. Loading, hauling and disposing of rejected Products.
 - 7. Products required in basic contract.

PART 2 – PRODUCTS & PART 3- EXECUTION - Not Used

SECTION 01040

PROJECT COORDINATION

PART 1 - GENERAL

1.1 SECTION INCLUDES

- A. Project Coordination
- B. Schedule
- C. Construction Meetings
- D. Shift Times

1.2 SCHEDULE

- A. Schedule: The general contractor shall submit a schedule of construction activities for approval. Work shall be started as soon as Notice to Proceed is received.
- B. Project Completion: Construction work is to proceed immediately from Notice to Proceed with on-site construction work to begin when directed and continue uninterrupted until completion. Timelines as established by Contractor will be adhered to and used as a guide to construction progress.

1.3 CONSTRUCTION MEETINGS/COORDINATION

- A. All contractors scheduled to have operations on site during any week, or when requested, shall attend weekly construction meetings as scheduled. All upcoming construction operations will be reviewed at this meeting to allow for scheduling of building activities. Close coordination with owner's representative must occur throughout construction period.
- B. Coordination: The general contractor shall provide scheduling and superintendence.

1.4 SHIFT TIMES

- A. Minimum of eight (8) hour work days during regular Monday – Friday schedule. Work can be arranged for longer hours.

1.5 SITE ACCESS/RESTRICTIONS

- A. Building Access: As building will be occupied during construction, access to facilities will not be allowed except for scheduled construction operations.
- B. Operations must be fenced to extent possible for safety. All entrances must remain passable unless prior arrangements for restricted use have been made.
- C. Storage Areas: Storage areas are indicated on plans and must be fenced by contractor to preclude access by patients or others.
- D. Maintain facility delivery access during construction. Coordinate operations with Owner's representative.
- E. Parking – See Section 01500.

SECTION 01300

SUBMITTALS

1.1 REQUIREMENTS INCLUDED

- A. Administrative provisions for required submittals.

1.2 RELATED REQUIREMENTS

- A. Sections 00700 and 00800 - General and Special Conditions
- B. Section 01340 - Shop Drawings, Product Data, and Samples
- C. Section 01700 - Contract Closeout Procedures - Closeout Submittals

1.3 SUBMITTALS

- A. Successful bidder will be required to submit the following:
- B. Performance and Material Payment Bond - on City Forms
- C. Non-Collusive Affidavit
- D. Progress Schedule
 - 1. The Contractor shall, within ten (10) days after the Notice of Award, prepare and submit to the Architect for approval, a schedule showing the order in which he proposes to carry on the work, and dates on which he will start, suspend, and complete the various items of work included in this agreement.
 - 2. The Contractor will be required to adhere to his proposed schedule and he shall prosecute the work in such a manner as to insure its completion within the time set forth in the contract. Any failure to adhere to the proposed schedule will be considered prima facie evidence that Contractor has failed to provide sufficient workmen, equipment or materials to insure completion of the work within the specified time limit.
- E. List of Subcontractors and Suppliers
- F. Certificates of Insurance

Certificates of insurance shall be filed with Owner and Architect/Engineer. No work under this contract shall be started until all insurance policies have been filed and approved.
- G. Other submissions required in this specification book.

SECTION 01340

SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

PART 1 - GENERAL

1.1 REQUIREMENTS INCLUDED

- A. Submit all shop drawings, product data, and samples to the Architect for approval.

1.2 RELATED REQUIREMENTS

- A. Conditions of Contract govern requirements of this section.
- B. Documents 00700 and 00800 - Conditions of Contract: Definitions and basic responsibilities of entities.
- C. Section 01720 - Project Record Documents
- D. Section 01730 - Operations and Maintenance Data

1.3 SHOP DRAWINGS

- A. Contractor shall review, approve, and then submit to the Architect with reasonable promptness and in such sequence as to cause no delay in the work or in the work of the Owner or any separate contractor, five (5) copies of all shop drawings, product data, and samples required by the Contract Documents. Each drawing must contain sufficient clear area for the Contractor stamp and the Architect/Engineer stamp.
- B. By approving and submitting shop drawings, product data, and samples, the Contractor represents that he has determined and verified all field materials, field measures, and file construction criteria related thereto, or will do so, and that he has checked and coordinated the information contained within such submittals with the requirements of the work and of the contract documents.
- C. The Contractor shall not be relieved of any responsibility for any deviation from the requirements of the Contract Documents by the Architect's approval of shop drawings, product data or samples, unless the Contractor has specifically informed the Architect in writing of such deviation at the time of the submission, and the Architect has given written approval to the specific deviation.
- D. The Contractor shall not be relieved from responsibility for errors or omissions in the shop drawings, product data, or samples by the Architect/Engineer's approval thereof.
- E. No portion of the work requiring submission of a shop drawing, product, or sample shall be commenced until the submittal has been approved by the Architect/Engineer. All such portions of the work shall be in accordance with approved submittals.

1.4 PRODUCT DATA

- A. Submit only pages which are pertinent; mark each copy of standard printed data to identify pertinent products referenced to Specification Section and Article number. Show reference standards, performance characteristics, and capacities; wiring and piping diagrams and controls; component parts; finishes; dimensions; and required clearances.

- B. Modify manufacturer's standard schematic drawings and diagrams to supplement standard information and to provide information specifically applicable to the work. Delete information not applicable.

1.5 SAMPLES

- A. Where specific color or finish is not indicated in the specification, submit samples for selection of finishes within eight (8) days after date of contract.
- B. Note: Architect will act on color, finish, texture and pattern selections within reasonable time (30 days minimum) after all sample palettes have been received.
- C. Submit full range of manufacturer's standard finishes except when more restrictive requirements are specified, indicating colors, textures, and patterns, for Architect/Engineer selection.
- D. Submit samples to illustrate functional characteristics of products, including parts and attachments.
- E. Approved samples which may be used in the Work are indicated in the specification section.
- F. Label each sample with identification required for transmittal letter.
- G. Provide field samples of finishes at Project, at location acceptable to Architect/Engineer, as required by individual specifications section. Install each sample complete and finished. Acceptable finishes in place may be retained in completed work.

1.6 MANUFACTURER'S INSTRUCTIONS

- A. Manufacturer's instructions for storage, preparation, assembly, installation, start-up, adjusting, and balancing.

1.7 CONTRACTOR'S REVIEW

- A. Contractor shall sign or initial each sheet of shop drawings and product data, and each sample label to certify compliance with requirements of Contract Documents. Notify Architect/Engineer in writing at time of submittal, of any deviations from requirements of Contract Documents.
- B. Do not fabricate products or begin work which requires submittals until return of submittal with Architect/Engineer acceptance.

1.8 SUBMITTAL REQUIREMENTS

- A. Transmit submittals in such sequence to avoid delay in the Work or work of other trade contracts.
- B. Provide blank space on each submittal for Architect/Engineer stamps.
- C. Apply Contractor's stamp, signed or initialed, certifying to review, verification of products, field dimensions and field construction criteria, and coordination of information with requirements of Work and Contract Documents.
- D. Submit under transmittal letter. Identify Project by title, work and product by specifications section and article number.

1.9 RESUBMITTALS

- A. Make resubmittals under procedures specified for initial submittals; identify changes made since previous submittal.

1.10 ARCHITECT/ENGINEER REVIEW

- A. Architect/Engineer will review shop drawings for general design only, product data, and samples and return submittals to Contractor within seven (7) days. Quantities are the responsibility of the Contractor.

1.11 DISTRIBUTION

- A. Duplicate and distribute reproductions of shop drawings, copies of product data, and samples, which bear Architect/Engineer stamp of approval, to job site file, Record Documents file, subcontractor, suppliers, other affected contractors, and other entities requiring information.

PART 2 PRODUCTS - Not Used

PART 3 EXECUTION - Not Used

SECTION 01500

CONSTRUCTION FACILITIES AND TEMPORARY CONTROLS

PART 1 - GENERAL

1.1 SECTION INCLUDES

A. Temporary Utilities

1. Electricity: All electricity for construction program and temporary lighting by Contractor.
2. Heat: Heating equipment and fuel by Contractor.
3. Telephone Service: Contractor will be required to have telephone service available.
4. Water: By Contractor.
5. Sanitary Facilities: Contractor to provide.

B. Temporary Controls

1. Barriers: By Contractor.
2. Enclosures and Fencing: By Contractor.
3. Protection of the Work: By Contractor
4. Safety Railings: Subcontract to provide required safety railings. Contractor shall supervise.

C. Construction Facilities

1. Parking: No Contractor parking will be allowed on site.
2. Project Sign: None on site.
3. Temporary Buildings: Not required.

D. Delivery of Materials: All delivery of materials across owner's parking lot must be coordinated with on-site staff.

E. Snow Removal: Snow must be promptly removed from construction area to off site.

F. Clean Up: Parking lot, staging area, and construction zone must be kept clean and all debris kept in approved dumpsters.

G. Safety Programs: Each contractor shall be responsible for their safety programs and safety programs of their subcontractors. They shall be responsible for holding safety meetings, adherence to safety programs for their own forces or forces that are performing work that is a part of their contract. They shall be further responsible for the related safety of the public or other persons on site relative to the work under their control.

In no case shall the Owner, the Architect, or their respective employees and agents have either direct or indirect responsibility for matters related to project safety.

SECTION 01700

CONTRACT CLOSEOUT PROCEDURES

PART 1 - GENERAL

1.1 REQUIREMENTS INCLUDED

- A. Administrative provisions for Substantial Completion and for final acceptance.

1.2 SUBSTANTIAL COMPLETION

- A. When Contractor considers Work or designated portion of Work is substantially complete, submit written notice to Architect with list of items to be completed or corrected.
- B. Should Architect/Engineer inspection find Work is not substantially complete, he will promptly notify Contractor in writing, listing observed deficiencies.
- C. Contractor shall remedy deficiencies and send a second written notice of substantial completion.
- D. When Architect/Engineer finds Work is substantially complete he will prepare a Certificate of Substantial Completion in accordance with provisions of General Conditions.

1.3 FINAL COMPLETION

- A. When Contractor considers Work is complete, submit written certification:
 - 1. Contract Documents have been reviewed.
 - 2. Work has been inspected for compliance with Contract Documents.
 - 3. Work has been completed in accordance with Contract Documents, and deficiencies listed with Certificate of Substantial Completion have been corrected.
 - 4. Equipment and systems have been tested, adjusted, and balanced, and are fully operational.
 - 5. Operation of systems has been demonstrated to Owner's personnel.
 - 6. Work is complete and ready for final inspection.
- B. Should Architect/Engineer inspection find Work incomplete, he will promptly notify Contractor in writing listing observed deficiencies.
- C. Contractor shall remedy deficiencies and send a second certification of final completion.
- D. When Architect/Engineer finds work is complete, he will consider closeout submittals.

1.4 REINSPECTION FEES

- A. Should status of completion of Work require reinspection by Architect/Engineer after substantial completion inspection and final inspection of this work and due to failure of

Work to complete, Owner will deduct the amount of Architect/Engineer's compensation for reinspection services from final payment to Contractor.

1.5 CLOSEOUT SUBMITTALS

- A. Project Record Documents: Under provisions of Section 01720.
- B. Operations and Maintenance Data: Under provisions of Section 01730.
- C. Warranties and Bonds: Under provisions of Section 01740.
- D. Spare Parts and Maintenance Materials: Under provisions of Section 01750.
- E. Keys and Keying Schedule: Under provisions of Section 08700.
- F. Evidence of Payment and Release of Liens: In accordance with Conditions of the Contract.
- G. Consent of Surety to Final Payment.
- H. Certificates of Insurance for Products and Completed Operations: In accordance with Supplementary Conditions.

1.6 STATEMENT OF ADJUSTMENT OF ACCOUNTS

- A. Submit final statement reflecting Adjustments to Contract Sum indicating:
 - 1. Original contract sum.
 - 2. Previous change orders.
 - 3. Changes under allowances.
 - 4. Changes under unit prices.
 - 5. Deductions for uncorrected work.
 - 6. Penalties and bonuses.
 - 7. Deductions for liquidated damages.
 - 8. Deductions for reinspection fees.
 - 9. Other adjustment to contract sum.
 - 10. Total contract sum as adjusted.
 - 11. Previous payments.
 - 12. Sum remaining due.
- B. Architect/Engineer will issue a final Change Order reflecting approved adjustments to Contract Sum not previously made by change orders.

1.7 APPLICATION FOR FINAL PAYMENT

- A. Submit application for final payment in accordance with provisions of Conditions of the Contract.

PART 2 PRODUCTS - Not Used

PART 3 EXECUTION - Not Used

SECTION 01710

FINAL CLEANING

PART 1 - GENERAL

1.1 REQUIREMENTS INCLUDED

- A. Final cleaning of project to be done by a company experienced in cleaning of carpet, masonry, windows, and building cleaning.

1.2 DESCRIPTION

- A. Contractors execute cleaning prior to inspection for Substantial Completion of each designated portion of the Work.
- B. Execute exterior and site cleaning. Provide access and coordinate with owner's personnel.

PART 2 - PRODUCTS

2.1 CLEANING MATERIALS

- A. Use materials which will not create hazards to health or property, and which will not damage surfaces.
- B. Use only materials and methods recommended by manufacturer of material being cleaned.

PART 3 - EXECUTION

3.1 CLEANING

- A. In addition to removal of debris and cleaning specified in other sections, clean interior and exterior exposed to view surfaces.
- B. Remove temporary protection and labels not required to remain.
- C. Clean finishes free of dust, stains, films, and other foreign substances.
- D. Clean transparent and glossy materials to a polished condition; remove foreign substances. Polish reflective surfaces to a clear shine.
- E. Vacuum clean carpeted and similar soft surfaces.
- F. Clean, damp mop, wax, and polish resilient and hard surface floors as specified.
- G. Clean surfaces of equipment; remove excess lubrication.
- H. Clean plumbing fixtures, food service equipment, to a sanitary condition.
- I. Clean permanent filters of ventilating equipment and replace disposable filters when units have been operated during construction; in addition, clean ducts, blowers, and coils when units have been operated without filters during construction.

- J. Clean light fixtures and lamps.
- K. Maintain cleaning until Substantial Completion.
- L. Remove waste, foreign matter, and debris from roofs, gutters, area ways, and drainage systems.
- M. Remove waste, debris, and surplus materials from site. Clean grounds; remove stains, spills, and foreign substances from paved areas and sweep clean. Rake clean other exterior surfaces.
- N. After substantial completion Owner will perform further cleaning as he may require.

SECTION 01720

PROJECT RECORD DOCUMENTS

PART 1 - GENERAL

1.1 REQUIREMENTS INCLUDED

- A. Maintenance of Record Documents and Samples.
- B. Submittal of Record Documents and Samples

1.2 RELATED REQUIREMENTS

- A. Conditions of Contract govern requirements of this section.
- B. Section 00700 - General Conditions
- C. Section 01300 - Shop Drawings, Product Data, and Samples
- D. Section 01700 - Contract Closeout Procedures
- E. Section 01730 - Operation and Maintenance Data
- F. Individual Specification Sections: Manufacturer' certificates and certificates of inspection.

1.3 MAINTENANCE OF DOCUMENTS AND SAMPLES

- A. In addition to requirements in General Conditions, all Contractors shall maintain at the site for Owner one record copy of:
 - 1. Contract Drawings
 - 2. Specifications
 - 3. Addenda
 - 4. Change Orders and other modifications to the Contract
 - 5. Reviewed shop drawings, product data, and samples.
 - 6. Field test records
 - 7. Inspection certificates
 - 8. Manufacturer's certificates
- B. Store Record Documents and samples in Field Office apart from documents used for construction. Provide fields, racks, and secure storage for record documents and samples.
- C. Label and file Record Documents and samples in accordance with Section number listing in Table of Contents of this Project Manual. Label each document "PROJECT RECORD" in neat, large, printed letters.
- D. Maintain Record Documents in a clean, dry and legible condition. Do not use Record Documents for construction purposes.
- E. Keep Record Documents and samples available for inspection by Architect/Engineer.

1.4 RECORDING

- A. Record information on a set of blue line opaque drawings and in a copy of a Project Manual, provided to Owner.
- B. Provide felt tip marking pens, maintaining separate colors for each major system, for recording information.
- C. Record information concurrently with construction progress. Do not conceal any work until required information is recorded.
- D. Contract Drawings and Shop Drawings: Legibly mark each item to record actual construction, including:
 - 1. Measured depth of element of foundation in relation to finish first floor datum.
 - 2. Measured horizontal and vertical locations of underground utilities and appurtenances, referenced to permanent surface improvements.
 - 3. Measured locations of internal utilities and appurtenances concealed in construction, referenced to visible and accessible features of construction.
 - 4. Field changes of dimension and detail.
 - 5. Changes made by Modifications.
 - 6. Details not on original Contract Drawings.
 - 7. References to related shop drawings and Modifications.
- E. Specifications: Legibly mark each item to record actual construction, including;
 - 1. Manufacturer, trade name, and catalog number of each product actually installed, particularly optional items and substitute items.
 - 2. Changes made by Addenda and Modifications.
- F. Other Documents: Maintain manufacturer's certifications, inspection certifications, and field test records, required by individual specification sections.

PART 2 PRODUCTS - Not Used

PART 3 EXECUTION - Not Used

SECTION 01730

OPERATION AND MAINTENANCE DATA

PART 1 - GENERAL

1.1 REQUIREMENTS INCLUDED

- A. Format and content of manuals.
- B. Instruction of Owner's personnel.
- C. Schedule of submittals.

1.2 RELATED REQUIREMENTS INCLUDE

- A. Conditions of Contract and Division 1 - General Requirements govern work of this section.
- B. Section 01340 - Shop Drawings, Product Data, and Samples
- C. Section 01700 - Contract Closeout Procedures.
- D. Section 01720 - Project Record Documents
- E. Section 01740 - Warranties and Bonds
- F. Section 01750 - Spare parts and maintenance materials.
- G. Individual Specifications Sections: Specific requirements for operation and maintenance data.

1.3 QUALITY ASSURANCE

- A. Instructions and data shall be prepared by personnel experienced in maintenance and operation of described products. Owner's personnel shall be instructed in the maintenance and operations as outlined below.

1.4 FORMAT

- A. Prepare data in the form of an instructional manual.
- B. Binders: Commercial quality, 8-1/2 x 11 inch three-ring binders with hardback, cleanable, plastic covers; one inch maximum ring size. When multiple binders are used, correlate data into related consistent groupings.
- C. Cover: Identify each binder with typed or printed title OPERATION AND MAINTENANCE INSTRUCTIONS: List title of Project, identify subject matter of contents.
- D. Arrange content by systems, under section numbers and sequence of Table of Contents of this Project Manual.
- E. Provide tabbed fly leaf for each separate product and system, with typed description of product and major component parts of equipment.

- F. Text: Manufacturer's printed data, or typewritten data on 20 pound paper.
- G. Drawings: Provide with reinforced punched binder tab. Bind in with text; fold larger drawings to size of text pages.

1.5 CONTENTS, EACH VOLUME

- A. Table of Contents: Provide title of Project; names, addresses, and telephone numbers of Architect/Engineer and Contractor with names of responsible parties; schedule of products and systems, indexed to content of the volume.
- B. For Each Product or System: List names, addresses and telephone numbers of subcontractors and suppliers, including local source of supplies and replacement parts.
- C. Product Data: Mark each sheet to clearly identify specific products and component parts, and data applicable to installation, delete inapplicable information.
- D. Drawings; Supplement product data to illustrate relations of component part of equipment and systems, to show control and flow diagrams. DO NOT USE PROJECT RECORD DOCUMENTS AS MAINTENANCE DRAWINGS.
- E. Typed Text: As required to supplement product data. Provide logical sequence of instructions for each procedure, incorporating manufacturer's instructions.
- F. Warranties and Bonds: Bind in copy of each.

1.6 MANUALS FOR MATERIALS AND FINISHES

- A. Building Products, Applied Materials, and Finishes: Include product data, with catalog number, size, composition, and color and texture designations. Provide information for re-ordering custom manufactured products.
- B. Instructions for Care and Maintenance; Include manufacturer's recommendations for cleaning agents and methods, precautions against detrimental agents and methods, and recommended schedule for cleaning and maintenance.
- C. Moisture-protection and weather-exposed products: Include product data listing applicable reference standards, chemical composition, and details of installation. Provide recommendations for inspections, maintenance, and repair.
- D. Additional Requirements: As specified in individual specifications sections.
- E. Provide a listing in Table of Contents for design data, with tabbed fly sheet and space for insertion of data.

1.7 MANUAL FOR EQUIPMENT AND SYSTEMS

- A. Each Item of Equipment and Each System: Include description of unit or system and component parts. Give function, normal operating characteristics, and limiting conditions. Include performance curves, with engineering data and tests, and complete nomenclature and commercial number of replaceable parts.
- B. Panelboard Circuit Directories: Provide electrical service characteristics, controls, and communications.

- C. Include as-installed color coded wiring diagrams.
- D. Operating Procedures: Include start-up, break-in, and routine normal operating instructions and sequences. Include regulation, control, stopping, shut-down, and emergency instructions. Include summer, winter and any special operating instructions.
- E. Maintenance Requirements: Include routine procedures and guide for troubleshooting; disassembly, repair, and reassembly instructions; and alignment, adjusting, balancing, and checking instructions.
- F. Provide servicing and lubrication schedule, and list of lubricants required.
- G. Include manufacture's printed operation and maintenance instructions.
- H. Include sequence of operation by controls manufacturer.
- I. Provide original manufacturer's parts list, illustrations, assembly drawings, and diagrams required for maintenance.
- J. Provide as-installed control diagrams by control manufacturer.
- K. Provide Contractor's coordination drawings, with as-installed color coded piping diagrams.
- L. Provide charts of valve tag numbers, with location and function of each valve, keyed to flow and control diagrams.
- M. Provide list of original manufacturer's spare parts, current prices, and recommended quantities to be maintained in storage.
- N. Include test and balancing reports as specified.
- O. Additional Requirements: As specified in individual specification sections.
- P. Provide a listing in Table of Contents for design data, with tabbed fly sheet and space for insertion of data.

1.8 INSTRUCTION OF OWNER'S PERSONNEL

- A. Before final inspection, instruct Owner's designated personnel in operation, adjustment, and maintenance of products, equipment, and systems, at agreed upon times. For equipment requiring seasonal operation, perform instructions for other seasons within six months.
- B. Use operation and maintenance manuals as basis of instruction. Review contents of manual with personnel in detail to explain all aspects of operation and maintenance.
- C. Prepare and insert additional data in Operation and Maintenance Manual when need for such data becomes apparent during instruction.

1.9 SUBMITTALS

- A. For equipment, or component parts of equipment put into service during construction and operated by Owner, submit documents within ten days after acceptance.

- B. Submit one copy of completed volumes in final form 15 days prior to final inspection. Copy will returned after final inspection with Architect/Engineer comments. Revise content of documents as required prior to final submittal.
- C. Submit four copies of revised volumes of data in final form within ten days after final inspection.

PART 2 - Not Used

PART 3 - Not Used

SECTION 01740

WARRANTIES, BONDS, AND GUARANTEES

PART 1 - GENERAL

1.1 REQUIREMENTS INCLUDED

- A. This is separate from performance and payment bonds which are reviewed in other parts of this document.

See also Instructions to Bidders: Bid Bonds.

General and Special Conditions: Performance Bond and Labor and Material Payment Bonds, Warranty, and Correction of Work.

- B. Preparation and submittal of warranties and bonds.
- C. Schedule of submittals.

1.2 RELATED REQUIREMENTS INCLUDE

- A. Conditions of Contract and Division 1 - General Requirements govern work of this section.
- B. Section 01710 - Contract Closeout Procedures
- C. Section 01730 - Operation and Maintenance Data
- D. Individual Specification Sections; Warranties and bonds required for specific products or work.

1.3 FORM OF SUBMITTALS

- A. Bind in commercial quality 8-1/2 x 11 inch three-ring side binders, with hard back, cleanable, plastic covers.
- B. Label cover of each binder with typed or printed title WARRANTIES AND BONDS, with title of project; name, address and telephone number of Contractor; and name of responsible principal.
- C. Table of Contents: Neatly typed, in the sequence of the Table of Contents of the Project Manual, with each item identified with the number and title of the specification section in which specified, and the name of Product or work item.
- D. Separate each warranty or bond with index tab sheets keyed to the Table of Contents listing. Provide full information, using separate typed sheets as necessary. List subcontractor, supplier, and manufacturer with name, address, and telephone number of responsible principal.

1.4 PREPARATION OF SUBMITTALS

- A. Obtain warranties and bonds, executed in duplicate by responsible subcontractors, suppliers, and manufacturers, within ten days after completion of the applicable item of work. Except for items put into use with Owner's permission, leave date of beginning of time of warranty until the Date of Substantial Completion is determined.

- B. Verify that documents are in proper form, contain full information, and are notarized.
- C. Co-execute submittals when required.
- D. Retain warranties and bonds until time specified for submittal.
- E. Submit to Owner.

1.5 TIME OF SUBMITTALS

- A. For equipment or component parts of equipment put into service during construction with Owner's permission, submit documents within ten days after acceptance.
- B. Make other submittals within ten days after Date of Substantial Completion, prior to final Application for Payment.
- C. For items of Work when acceptance is delayed beyond date of Substantial Completion, submit within ten days after acceptance, listing the date of acceptance as the beginning of the warranty period.

PART 2 - PRODUCTS - Not Used

PART 3 - EXECUTION - Not Used

SECTION 02200

EARTHWORK

PART 1 - GENERAL

1.1 EXTENT

- A. This section includes removal of existing paving, excavation of top 18 inches of material under areas to be repaved, and finishing and installation of Class 5 gravel in these areas, and as necessary to provide grades and surface water flows existing or as indicated.
- B. In addition, perform all excavation, removal, and soil preparation for curbs and sidewalks indicated to be revised, replaced, or repaired.

1.2 GENERAL PROVISIONS

- A. Protect all existing improvements to remain including structures, streets, walks, utilities, trees, shrubs, and lawn areas. The Contractor is liable for damage he causes outside the construction limits shown on the Site Plan and must restore any damaged items.
- B. Maintain carefully all benchmarks, monuments, and other reference points. If disturbed or destroyed, replace as directed.

PART 2 - PRODUCTS

2.1 MATERIALS

- A. Gravel - Selected fill material shall be essentially well graded sand and gravel or crushed rock conforming to the following:

<u>Sieve Size</u>	<u>Total Percent Passing</u>
3"	100
1/2"	65 - 100
#4	50 - 90
#10	30 - 80
#40	0 - 40
#200	0 - 10
Liquid Limit	Max. 25
Plasticity Index	0 - 8

The above gradations represent the extreme limits that shall determine the suitability of aggregate for use. The aggregate shall have a gradation within the limits designated and further shall be uniformly graded from coarse to fine. The fill material shall be non-expansive, free of organic matter, trash, or other foreign matter and deleterious substances.

- B. Earth fills for berms shall be bank run sand loam soil brought to site and placed by this contractor.
- C. Where adjacent areas within the project site, but outside the contract limits for grading, are disturbed as a result of building operations or storage of materials under the contract; they shall be cleaned of all debris and restored to original grades and conditions (including seeding or sodding).

- D. Furnish, place, and tamp gravel backfill.

PART 3 - EXECUTION

3.1 EXCAVATION

- A. **Drainage:** Contractor shall control the grading around building so that ground is pitched to prevent water from running into the excavated areas or damaging the structures. Maintain all pits and trenches where footings are to be placed, free of water at all times. Provide all pumping required to keep excavated spaces clear of water during construction. Should any springs of running water be encountered in the excavation, the Architect shall be notified and the Contractor shall provide free discharge of it by trenches and drain to an appropriate place of disposal as directed. If permanent provision must be made for disposal of water, the contract price will be adjusted.
- B. **Frost Protection:** Do not place footings or slabs on frozen ground. When freezing temperatures may be expected, do not excavate to the full depth indicated unless the footings or slabs can be placed immediately after excavation has been completed. Protect the bottoms so excavated from frost if placing of concrete is delayed. Protect bearing soil after concrete is placed.

3.2 DISPOSITION OF UTILITIES

- A. Any existing sanitary sewer, water, gas, electrical and storm sewer systems must be kept operational.
- B. Rules and regulations governing the respective utilities shall be observed in executing all work under this section.
- C. Active utilities shown on the drawings shall be adequately protected from damage and removed or relocated only as indicated or specified. Where active utilities are encountered that are not shown on the drawings, the Architect shall be advised; and the work shall be adequately protected, supported, or relocated as directed by the Architect. The contract price will be adjusted for such additional work.
- D. Inactive and abandoned utilities encountered in excavating and grading shall be reported to the architect. They shall be removed, plugged, or capped as directed by the Architect. See mechanical plans. In absence of specific requirements, plug or cap such utility lines at least three feet outside of new building walls or as required by local regulations.

3.3 SITE GRADING

- A. **Grades:** Do all cutting, filling, compacting of fills and rough grading required to bring the entire project area, outside of buildings, to subgrades as follows:
 - 1. For surfaced areas (roadways, parking areas, service courts, steps and walks) to the underside of the respective surfacing or base course, as fixed by the finished grades therefore.
 - 2. For lawn and planted areas, to four inches below finished grade.
 - 3. Sidewalk - Areas to receive sidewalk shall be excavated to a point four inches below bottom of sidewalk slab. Furnish and install four inches of bank run sand and gravel and thoroughly roll and fine grade.

3.4 ACCESS

- A. Provide access and egress from facilities at all times. If during paving, access to specific areas needs to be limited; a schedule in writing must be provided and agreed to as a plan by occupants.

3.5 COMPACTION

- A. Material whose moisture content is more than 5% greater than that of the optimum shall be dried out prior to placing and compacting.
- B. Compaction over ditches less than 3'-0" in width and other areas not accessible to regular compaction equipment shall be accomplished by the use of mechanical hand compactors, such as a "Jackson Compactor" or approved equal. Fill shall be placed in horizontal layers not to exceed 8 inches in depth and moistened by sprinkling as required.

3.6 SAMPLING AND TESTING

- A. Owner will pay for testing. Cooperate with testing laboratory on notification and sampling.

SECTION 02600

PAVEMENTS, CURBS, GUTTERS, WALKS

PART 1 - GENERAL

1.1 SUMMARY

- A. Work Included: This section includes installation of all bituminous driveways and parking area pavements, concrete curbs and gutters, walks, compacted aggregate bases, and all other surface improvements apart from building except as stipulated below.
- B. Work Not Included: This section does not include:
 - 1. Grading and related work which is covered by Section 02200.
 - 2. Utility installation
- C. Limits of Work: The drawings show construction limit lines for the purpose of identification. All contract work is confined within these lines.
- D. Coordination: The work specified in this section shall be coordinated carefully with earthwork, excavation, filling and grading, underground utility work covered by other divisions.
- E. Scheduling: Access and egress must be maintained at all times. If for limited times certain areas need to be protected from loads, these times must be set up in a written plan approved by owner.

1.2 REFERENCES

- A. City and State Specifications: Shall be followed for all required work on public property. Where the words "City Specifications" and "State Specifications" are used herein, they shall be understood to refer to the standard specifications of the City of Duluth, Minnesota, and those of the Minnesota Department of Transportation, respectively. Reference to either City or State Specifications is solely for the purpose of specifying kind and quality of materials and methods of construction. Where no City or State Code or specification applies, the requirements of this specification shall be followed.

1.3 GUARANTEE

- A. Guarantee: All work shall be guaranteed by this contractor for one year and at that time this contractor shall schedule an inspection with the Owner to obtain a release from this guarantee. Release does not limit owner's recourse if work is determined not to meet requirements of plans or specifications.

PART 2 - PRODUCTS

2.1 MATERIALS

- A. Conform with Minnesota Standard Specifications for Highway Construction for the following:

- B. Roads and Parking
Gravel fill material
Plant mixed bituminous surface
Line paint - T3301 Yellow traffic Paint - Federal Spec. TT-P-115D
Parking line paint - White
Handicapped parking area - Light blue background with white markings.
MN DOT Standard Plate 7035J Concrete Walk and Curb Returns at Entrances
Culverts – See Section 02550
- C. Concrete Walks and Stoops
Concrete mix no. 3A32, air entrained
Preformed joint filler
Plastic sheeting curing material (or equal)
Granular materials (Class 5 aggregate or approved equal).
- D. Concrete Curb and Gutter
MN DOT Standard Plate 7100F Design B with 6" high curb and 24" gutter width as per attached plate.
Curb and gutter - Section 2531
Concrete mix no. 3A32, air entrained
Reinforcement bars
Preformed joint filler
Concrete treating oil
Plastic sheeting curing material (or equal)
Granular materials (Class 5 aggregate)
- Install with depression in flow line at catch basin locations or cutouts as shown on drawings.
- E. Culverts: See plans.
- F. Gravel Base:
1. Gravel Fill Material: To be a non-frost susceptible soil with a maximum of 3% finer than .02 mm. Gravel fill material is to be compacted to 95% of standard proctor.
 2. Aggregate Base: To be Class 5 Granular Gravel Base - Section 2211 - Class 3 and Class 4 Aggregate Base - Shaped to desired grade and cross section and to be compacted to 95% of standard proctor, see drawings. Prior to the application of the prime, the moisture content of the granular base should be low enough to permit penetration into the granular base by the bituminous material (a maximum of 65% of optimum in the upper three inches according to MN DOT Specification 2358) which will require a drying period after placement of the base. Drying or curing periods vary with the weather conditions and character of the base, but a minimum of one day for the base to dry sufficiently is considered typical.
- G. Asphalt Concrete Paving: Use hot plant asphaltic concrete mixed at a central mixing plant. Spread and compact on a prepared base to the compacted thickness indicated. Refer to plans for type and thickness.
- H. Geotextile Fabric: Furnish and install below roadways (see drawings) Mirafi 600X Geotextile fabric, or approved equal, Type V for use in stabilization.

PART 3 - EXECUTION

3.1 COMPACTION

- A. All gravel fill material and Class 5 aggregate base shall be compacted to 95% of standard proctor (ASTM D698). The moisture content shall not vary by more than +/- 3% of optimum when placed and compacted.

3.2 GEOTEXTILE FABRIC

- A. Install Geotextile fabric in strict accordance with manufacturer's specifications.

3.3 ASPHALT CONCRETE PAVING

- A. General: Place asphaltic concrete only when the surface is dry, and when the temperature in the shade is 40 degrees F or above and rising, and when Architect determines that weather conditions are suitable. Place no asphaltic concrete when the weather is foggy or rainy, or when the base on which the material is to be placed contains moisture in the excess of the optimum.

- B. Placing:

1. Deliver asphaltic concrete at a temperature no higher than necessary for placing, finishing, and spreading, but high enough to accomplish the work. If ordered by Architect, furnish tarpaulins to cover all loads during transportation. No "free-treating" fluid allowed in the truck bodies at the time of loading.
2. Handle the mixture at all times to prevent segregation. Use self-propelled spreaders. Spread the material so there are not areas of excess coarse or fine material.
3. At areas inaccessible to the spreading or compacting equipment, spreader compact the mixture by other methods approved by Architect.
4. Place the asphaltic concrete on smooth, firm base true to grade and cross section as indicated. Remove all irregularities such as humps or high spots so the paving surface will be of uniform thickness.
5. No additional compensation will be allowed for material and work incidental to the correction of any irregularities.
6. At joints between the new asphalt concrete and other pavement or curbs, paint the existing material with asphalt tack coat.
7. If interruption occurs during placement of asphalt materials and the project is shut down, clean the surfaces and reapply a tack coat before resuming work.
8. Remove and replace areas showing blisters, buckles or ravels and any portion of the pavement showing depressions or pockets due to improper or fault base structure as directed by Architect.

- C. Surface Requirements

1. Compact the surface thoroughly, smooth and true to grade and cross section and free from rust, humps, depressions that hold water, or irregularities. Maintain surface tolerance to within 1/4" measured in any direction with a 10'

straightedge. Remove and replace any defects and any areas which exceed the specified tolerance.

2. Where corrections are necessary, cut out along neat straight lines, apply tack coat, and replace with fresh hot mixture and thoroughly compact to conform with and bond to the surrounding edge.
- D. Verification: Furnish a statement supported by weight tickets showing the following:
1. The area paved.
 2. Calculations showing the minimum amount of materials required.
 3. Amount actually used.
 4. The Owner may elect to core the completed paving to verify compliance with the specifications. If coring is so directed, the unit price will govern. If paving is proven defective, the subcontractor will repair and restore or replace as directed without charge, any portion of the asphaltic concrete paving in which creeping, cracking, raveling, softening or other defects appear, and will pay cost of coring and filling core holes.

3.4 MARKING LINES

- A. Furnish and install roadway centerline marking lines, handicapped parking stall designation, and parking painting as indicated on drawings.
- B. Painting shall not be performed on bituminous surfacing until the surfacing has cured for two (2) weeks, or unless otherwise authorized in writing by the Owner.

SECTION 02920

SODDING AND GROUND COVER

PART 1 - GENERAL

1.1 WORK INCLUDED

- A. The work under this section consist of furnishing all labor, materials, equipment, and related services required for all sodding and fertilizer where indicated on the drawings and as specified herein. Work includes installation of sod along new bituminous surfaces or where disturbed by construction operations.
- B. This contractor shall be responsible for verifying the quantity available and include additional topsoil as required and as specified in Section 02830. Removal of any excess material shall be the responsibility of this contractor.
- C. Maintain carefully bench marks, monuments, and other reference points. If disturbed or destroyed, have replaced or relocated by a registered land surveyor at the Contractor's expense.

1.2 RELATED WORK

- A. Trees – not included.
- B. Topsoil

1.3 PROTECTION

- A. The Contractor shall protect that which is to remain and shall conduct all sodding or seeding operations in a manner that will not damage or jeopardize the surrounding plant life designated on the drawings to remain.

PART 2 - PRODUCTS

2.1 MATERIALS

- A. Seed: N/A
- B. Sod: Sod shall include a maximum of the top 1" of well established cultured sod consisting in the major part of live Kentucky Bluegrass grown on loam soil. Sod shall be free from noxious weeds and relatively free from all other weeds, and free from roots, stones, and other objectionable materials. Sod shall resist normal handling without undue breaking or tearing. Sod shall be cut in uniform strips 18" minimum width and shall be cut to a uniform thickness so a dense root system will be retained but be exposed on the bottom side of the sod. When the sod is cut, it shall be sufficiently moist to withstand exposure and handling during the transplant operations. If necessary, the sod shall be watered before cutting.

Before the sod is cut, it shall be raked free of debris and the top growth shall be trimmed to a height of approximately 1-1/2 inches.

- C. Fertilizer: Fertilizer shall be a commercial formula, containing minor trace elements and conforming to applicable State fertilizer laws. Specific formula is noted elsewhere in these specifications.

- D. Water: Water shall be suitable for irrigation and free from ingredients harmful to plant life. Water shall be provided by the Contractor.
- E. Type 5 Mulch: N/A

PART 3 - EXECUTION

3.1 GROUND PREPARATION

- A. Areas to be sodded or seeded shall have a 3" layer of topsoil cover as specified and as approved by the Architect, provided by and brought to finish grade by this Contractor. In the event that the topsoil cover has been disturbed or is not of acceptable depth prior to the application of sod or seed, this Contractor shall be required to supplement the topsoil in the area and to bring it up to the specified depth. All areas for sodding and seeding shall be worked by this Contractor until the soil is completely fined and in a mellow condition to smooth, even, finish grade.
- B. All holes, depressions and rivulets shall be filled in to ensure no disruption of established drainage patterns. All rubble, sticks, branches or stones and extraneous material over 1/2" diameter on the surface which will interfere with the sod or seed shall be picked up and removed.
- C. Immediately prior to sodding or seeding, the Contractor shall loosen topsoil to a depth of 3" on all areas except slopes steeper than 2 horizontally to 1 vertically using discs, harrows, tiller rakes to produce fine grade. On slopes steeper than 2:1, use cultivating equipment in general direction at right angles to the direction of surface drainage wherever practical.

3.2 FERTILIZING

- A. Fertilizer shall be a commercial formula containing at least the minimum analysis of agriform 16-7-12 controlled release fertilizer at rate of 25 lbs. per 1000 sq. ft. (1000 lbs. per acre).
- B. Fertilizer shall be applied to properly prepared soil bed prior to sodding with a mechanical spreader and thoroughly mixed in by means of a meeker harrow, or weighted chain link fence, or other approved method in top 3 inches. Fertilizer must be dry and free flowing when applied.
- C. Fertilizer shall be applied before seeding, but not more than 14 days before seeding. Areas which are not seeded within 14 days after application of fertilizer shall be refertilized before seeding.
- D. Just prior to dormant seeding, apply 0.5 pound actual Nitrogen, natural organic or slow release fertilizer into top 1/2 inch of seed bed.

3.3 SODDING

- A. Precautions shall be taken to prevent sod from drying out and from heating. Sod that shows visible signs of heating shall not be incorporated in the project.
- B. Strips shall be place tightly against each other so that no open joints are apparent. Joints between ends for strips shall be staggered at least one foot between adjacent rows. Sod shall be placed without stretching.

- C. On slopes, the sodding shall begin at the bottom and progress upward with strips laid transverse to the flow of water. If necessary to protect sod already laid, the Contractor shall furnish ladders or treaded planks for workmen.
- D. At the top of slopes, sod will be laid so water from adjacent areas will have free flow into sodded areas.
- E. No sodding shall be done earlier than August 15 or later than October 15, for fall sodding; or earlier than April 15 nor later than June 1, for spring sodding. Changes in above dates only if directed on the drawings, these specifications, or by Architect.
- F. Sod shall be watered and compressed into the underlying soil by rolling, or tamped into place. The initial wearing and rolling shall provide firm contact and bond between the sod and the underlying soil. The rolling shall result in a smooth even surface free of humps and depressions, but shall not cause excessive compaction.
- G. Keep sod continuously moist and well watered for 14 days after laying. Thereafter, water sod until soil is soaked at least once every 4 days unless natural rainfall has provided equivalent water.

3.4 STAKING

- A. Sod placed on slopes steeper than 3:1 shall be staked. Sod shall be staked by driving wood stakes spaced not more than 30" apart at an angle against the flow of the water until the stakes project 1/2" above the sod. The Architect may approve alternative methods for staking sod. Stakes shall be removed at a time when the sod has become re-established.

3.5 WATERING AND MOWING

- A. Watering of all turf areas shall be performed by the Contractor as necessary to assure that sodded areas are uniformly moistened and maintained in a moist condition until the project has been approved and responsibility for maintenance accepted by Owner.
- B. Sodded areas shall be mowed to a height of 1-1/2", if the growth exceeds 3" during the construction period, prior to acceptance by the Owner.

3.6 ESTABLISHMENT AND REPLACEMENT

- A. Any sod which fails to become established after one (1) month from installation shall be replaced in the following spring at the Contractor's expense and then guaranteed one year from that date.
- B. The Contractor shall water and maintain sodded areas until accepted by the project representative.