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 AND ANY OTHER WRITTEN AGREEMENTS ON CONDON SAME DATED BY THE SELLER IN ANY PRIOR PROPOSAL, ON SELLER'S ACKNOWLEDGMENT FORM, OR IN OTHER DOCUMENTS. ACCEPTANCE OF THIS ORDER IS DEEMED BY BUYER TO BE A MATERI AL ALTERATION OF THIS ORDER AND IS HEREBY OBJECTION TO BY BUYER. ANY SUCH TERMS OR CONDITION SHALL BE TOTALLY INAP PROPRIATE TO THESE TERMS UNLESS SPECIFICALLY AGREED TO IN A WRITING SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BUYER. AC CEPTANCE OF THE GOODS OR SERVICES COVERED BY THIS ORDER WILL NOT CONSTITUTE ACCEPTANCE 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 THE ORDER; DELIVERY OF ANY OF THE GOODS ORDERED; INFORMING THE BUYER IN ANY MANNER OF COMMENCEMENT OF PERFORM ANCE; OR RETURNING SELLER'S OWN FORM OF ACKNOWLEDGEMENT.

2. PRICE. If price (either fixed price or hourly rate) in case of a fixed price or material order) and/or delivery not specified by Buyer on the face of this order, Seller shall immediately submit its best price, delivery date, and any other terms of the order for approval and acceptance. Seller warrants that the prices and other terms for the articles sold to Buyer under this order are not less advantageous to Buyer than those extended to all other customers for the same or like articles. At the time of the award, Buyer notifies Seller of the amount of price for such articles during the term of this order. Seller agrees to reduce this price hereafter accordingly. In this order is in a time and material basis, the following shall apply: price shall be (a) material at Seller's cost, less scrap, without any extras for handling or otherwise, plus (b) time at agreed hourly rates. If both engineering work and manufacturing work are involved, the time and material rates shall be specified for each thereof. No overtime shall be employed in performance of this order without Buyer's prior written consent.

3. PACKING AND SHIPMENT. If Goods are to be delivered under this order, the cost and fees negotiated for this order are deemed to include all packaging and/or shipping costs. Goods shall be shipped in approved condition and quantities prepared in accordance with good commercial practice and assisted by common carriers. In accordance with Buyer's specifications, the Seller shall mark handling and loading instructions, shipping information, order number, lot and identification, destination, and addresses of Seller and Buyer. An itemized packing list shall accompany each shipment. Upon delivery, Seller shall furnish Buyer with the name of each person. Early shipments may, at option of Buyer, be returned to Seller at Seller's risk and expense or may be retained by Buyer and Seller shall be liable for all costs of Buyer

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. Buyer'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. Seller'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 duplic ate and shall give the date of shipment and shall be mailed within twenty-four hours after shipment. Taxes, freight and similar charges shall be shown separately. Each invoice shall be accompanied by all of lading or express receipt. Payments shall be subject to adjustment, without notice, for shortages, reworks or other causes. Discount period, if any, shall commence on the date invoice is received or goods are received, whichever is earlier. Invoices for payment will be made for payment of all claims, without deduction for any taxes, interest or other charges. Unless otherwise authorized in writing by Buyer, Seller shall use such materials, equipment, and supplies as are necessary for the performance of purchase orders for Buyer. Seller shall be responsible for any loss, damage, or destruction to such materials, equipment, and supplies. Any overrun or underrun in overrun orders is subject to the change in price under this order.

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 defects from amount due Seller. Seller warrants that goods shall be produced under a quality control system that provides at least a minimum for the prevention and rapid detection of discrepancies and for timely and positive corrective action. Seller warrants that all quality control records 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 Buyer. 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, conditions, or representations of law, Seller warrants that all material or goods covered by this order shall contain no defects and shall perform satisfactorily. All warranties, both expressed and implied, also constitute conditions and shall survive inspection, acceptance, and/or payment by Buyer to the benefit of Buyer and its customers. Without limitation of any rights by reason of any damages, whether or howsoever caused, 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 Federal Trade Commission, the Department of Health and Human Services, the Truth in Negotiation Act, the Resources Conservation and Recovery Act, the Federal Insecticide, Fungicide, and Rodenticide Act, the Toxic Substances Control Act, and any other applicable federal, state, or local laws, rules, or regulations.

9. CHANGES. Buyer may, at any time by written order, make changes in the design, specification, materials, method of shipment or packing, time or place of delivery, require additional test procedures, or other addition to the work of the order. 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") it is declared as special dies, molds, tools, Jigs, fixtures, test equipment, masks, etc, or pays for such material or equipment, Buyer shall retain or vest in Buyer and Seller shall identify, maintain and preserve such material and "equipment" and shall dispose of it (a) upon acceptance by Buyer, and (b) in accordance with Buyer's direction. Such material and "equipment", and whenever practical such individual item thereof shall be plainly marked with Buyer's identification. Seller shall be deemed "property of the City of Duluth" and shall be safety stored separately and apart from Seller's property. Seller shall not resell any of Buyer's property or Equipment until otherwise authorized in writing by Buyer. Seller shall use such material, equipment, or other property as is necessary for the performance of purchase orders for Buyer. Seller shall be responsible for any loss, damage, or destruction to such materials, equipment, or other property. Buyer shall be reimbursed to the extent that the cost of such change under this order is subsumed in the contract and transaction of Buyer, in form and with evidence satisfactory to Buyer, promptly, but no later than 60 days after the effective date of the termination. If Seller fails to submit a termination claim within the time period, Buyer shall be in default and entitled to all losses due to such default.

11. ASSIGNMENT. Buyer 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 threatened work stoppage or labor dispute hinder Buyer's performance of its obligations hereunder, Buyer shall give written notice to Seller in any event, and will, at Seller's expense, take any action to minimize the effects of 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 must submit to arbitration. (b) Termination With Cause. If Seller fails to make any delivery in accordance with the agreed delivery dates or schedule or terms or conditions herein, or does not perform the agreed delivery dates or schedule or terms or conditions herein, or fails to perform any other obligation hereunder, Buyer may, by written notice to Seller, terminate all or any part of the undelivered portion of this order without liability to Seller on account of the terms elsewhere on such terms and in such manner as Buyer may deem appropriate and Seller shall be liable to Buyer for all excess costs occasionedBuyer 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 Goods, licenses, sale, or use of the Goods, except for any such infringement resulting from Seller's compliance with defendant's 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 reproduce the Seller's applicable literature, such as catalogues and maintenance manuals, and other similar documents and sales literature. Seller shall advise Buyer of any updated information relative to the foregoing literature and documentation with timely notification of new editions.

15. PUBLIC LIABILITY INSURANCE. Buyer shall hold the Seller and its employees, in all instances, with respect to performance of work or services hereunder, harmless from any damages, losses, claims, or liabilities, and shall be indemnified by Seller for all such damages, losses, claims, or liabilities.
NON-COLLUSION AFFIDAVIT

PART 1 GENERAL

1.1 DOCUMENT INCLUDES

A. Attached City of Duluth Non-Collusion Affidavit Form.

PART 2 PRODUCTS

NOT USED

PART 3 EXECUTION

NOT USED

END OF DOCUMENT
AFFIDAVIT AND INFORMATION REQUIRED OF BIDDERS

Affidavit of Non-Collusion:

I hereby swear (or affirm) under 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 or materials, supplied, 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 me before this___ day of ________________, ________

NOTARY PUBLIC_________________________

My commission expires:_____________________

Bidder=s E.I. Number____________ (Number used on employer=s quarterly Federal Tax return)
DOCUMENT 00 45 36
EQUAL EMPLOYMENT OPPORTUNITY AFFIDAVIT

PART 1 GENERAL

1.1 DOCUMENT INCLUDES
   A. Attached City of Duluth Equal Employment Opportunity Affidavit Form.

PART 2 PRODUCTS
NOT USED

PART 3 EXECUTION
NOT USED

END OF DOCUMENT
EQUAL EMPLOYMENT OPPORTUNITY EEO AFFIRMATIVE ACTION
POLICY STATEMENT & COMPLIANCE CERTIFICATE

TO: City of Duluth, MN

PROJECT NUMBER & DESCRIPTION


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 AMinority 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 ACompliance Responsibility for Equal Opportunity@ published by the U. S. Department of Labor which is incorporated herein by reference. Additional requirements are defined in 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 Asegregated 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 area, 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 $50,000Bshall prepare and maintain a written affirmative action compliance program that meets the requirement 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 - AConstruction 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 received in excess of $2,500 require that: (1) the subcontractor shall execute an AEO Statement and Certification similar in nature to this AStatement and Certification, (2) said documentation to be maintained on file with the FIRM or subcontractor as may be appropriate.

Executed this _______ day of ____________, 20__ by:

________________________________________

Printed name and title

________________________________________

Signature

NOTE: In addition to the various remedies prescribed for violation of Equal Opportunity Laws, the penalty for false statements is prescribed in 18 U.S.C. 1001.
DOCUMENT 00 61 13
PAYMENT BOND FORM

PART 1 GENERAL

1.1 DOCUMENT INCLUDES

A. Attached City of Duluth Payment Bond Form.

PART 2 PRODUCTS
NOT USED

PART 3 EXECUTION
NOT USED

END OF DOCUMENT
CITY OF DULUTH
PAYMENT BOND

LET IT BE KNOWN THAT: We:

__________________________
(contractor's name)

(hereinafter called the "Contractor") located at: ____________________________

__________________________
(contractor's address)

and ____________________________
(surety's name)

(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, subcontractors 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

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

This instrument was acknowledged before me on ____________________________

by ____________________________ as ____________________________ of ____________________________.

Notary Seal

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/she is the __________________________________________ (title) of

generally: ____________________________

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

daughter 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

APPROVED AS TO FORM, CORRECTNESS AND VALIDITY HEREOF

Dated this _____ day of _____________, 20__

______________________________

City Attorney  Duluth MN

Dated this _____ day of _____________, 20__

______________________________

Finance Director  Duluth MN

PAYMENT BOND:Rev. 3-5-2013
DOCUMENT 00 72 00

GENERAL CONDITIONS

PART 1 GENERAL

1.1 DOCUMENT INCLUDES

A. Attached City of Duluth General Conditions.

PART 2 PRODUCTS

NOT USED

PART 3 EXECUTION

NOT USED

END OF DOCUMENT