

SPECIAL CONDITIONS

1) PROJECT

The project consists of all labor, material and equipment, as well as disposal costs, fees and taxes necessary for the installation of an undulated metal panel system on the exterior of Fires Station #1 at the area of southeast corner stair well.

2) ARCHITECT/CONSULTANT

Consultant on record for this project is Northland Consulting Engineers, LLP,

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 site, and become fully informed as to the existing conditions under which work will be performed, or which will in any manner affect the work under this contract. Bidder include in the proposal any and all sums required to execute the work under existing conditions. A mandatory site visit is scheduled for: Wednesday, April 22, 2015 at 9 AM, 151A Lakewalk on Superior Street.

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 or Final Signed Contract and to be substantially completed by June 18th, 2015 unless circumstances are mutually agreed upon by contractor and the City of Duluth for a delay. 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 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 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: Tari Rayala, 1532 West Michigan Street, Duluth, Minnesota 55806. Email correspondence is preferred, trayala@duluthmn.gov.

- 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.
- 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 the 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

Contract plans and specs are available at Sheldon Print and Design.

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, the contractor shall bear the cost arising therefrom.

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 acceptance of surfaces and places responsibility for acceptable final results on subcontractor 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 the work.

19) HOISTS AND SCAFFOLDING

All hoists and scaffolding shall be provided by each contractor for contractor's 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. Whenever possible, emailed submittals are preferred.

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/email, 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.).

Fall Protection Plan: This option is available only to employees engaged in leading edge work, pre-cast 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. Email correspondence is encouraged. All substitutions must be approved by the architect or owner.

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 vehicles or people.
- 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 contractor operation. At the completion of the work, contractor shall remove all waste materials from the project as well as 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.

Instructions for Form SDE

Who can apply?

A non-Minnesota contractor can apply for an exemption if your contract exceeds or is expected to exceed \$50,000 or multiple contracts have exceeded \$50,000 cumulative per calendar year for work done in Minnesota.

Before you start

You must have a Minnesota tax ID number from the Department of Revenue to request this exemption.

If you don't have one, you must apply for one. Go to our website at www.taxes.state.mn.us and click "Register for a Minnesota tax ID number" on the e-services menu. If you do not have Internet access, call Registration Services at 651-282-5225 or 1-800-657-3605.

How to apply

To apply for an exemption from Minnesota surety deposits, file Form SDE before the project is started.

Mail this form and any required attachments to the address on the front.

If you're approved

If we approve the exemption, we'll sign the bottom of this form and return it to you. Make a copy for your records and give the original to the business for whom you are doing the work.

If you're not approved

If we determine you're not eligible for exemption, 8 percent of each payment made to you must be withheld by the business for whom you are doing the work and deposited with the Department of Revenue.

To apply for a refund, complete Form SDR, *Refund of Surety Deposits for Non-Minnesota Contractors*. When the project is complete, and we determine that you have complied with Minnesota income, withholding and sales tax laws, you'll receive a refund plus interest at the current rate required by law.

Use of information

All information on this form is required except for your phone number.

All information is private by state law. It cannot be given to others without your permission, except to the Internal Revenue Service, other states that guarantee the same privacy, the contract owner or bonding company, and certain government agencies as provided by law.

Information and assistance

If you need help or additional information to fill out this form, call 651-282-9999 or 1-800-657-3594. TTY: Call 711 for Minnesota Relay.

A fact sheet on surety deposit requirements (Fact Sheet 12) is also available upon request.

We'll provide information in another format upon request to persons with disabilities.

Exemption from Surety Deposits for Non-Minnesota Contractors

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

Contractor information	Contractor		Total contract amount	Minnesota tax ID number
	Address		\$	
	City	State	Zip Code	Daytime phone ()
	Contract starting date		Projected completion date	
Business type (check one):				
		<input type="checkbox"/> Corporation	<input type="checkbox"/> S corporation	
		<input type="checkbox"/> Partnership	<input type="checkbox"/> Sole proprietor	

Project information	Name of business or government agency			Contact person	Daytime phone ()
	Contract owner's address		City	State	Zip Code
	Project location address		City	State	Zip code
			Project number		

I request exemption from surety deposits under Minnesota law (MS 290.9705) for the following reason (check one and complete the information requested):

- I have a cash surety or a bond secured by an insurance company licensed in Minnesota. The bond must be 8 percent of the total contract amount. **Attach a copy of the bonding agreement.**

Reason for exemption	Bonding company			Bonding agent
	Address			Daytime phone ()
	City	State	Zip code	Period of bond (month/day/year) From / / To / /

- I have done construction work in Minnesota during the past three calendar years and have fully complied with Minnesota law regarding Minnesota income, sales and withholding taxes.
- I am performing work for a government agency and have a payment and performance bond.
- I am performing work for a government agency and have a cash surety issued by a state bank, national bank, or savings and loan association doing business in Minnesota.

I declare this information is true and complete to the best of my knowledge and belief. I authorize the Department of Revenue to send a copy of this form to the contract owner and discuss this case and related taxes with the bonding company.

Sign here	Contractor's signature	Title	Date

Mail to: Minnesota Revenue, Mail Station 6501, St. Paul, MN 55146-6501

Department of Revenue Approval

The above-named out-of-state contractor is exempt from the surety requirements of Minnesota Statute 290.9705 for this project.

Department of Revenue approval

Date

Surety Deposits for Non-Minnesota Construction Contractors

12

Withholding Fact Sheet 12

Fact Sheet

This fact sheet explains the Minnesota law requiring surety deposits for many non-Minnesota construction contractors (M.S. 290.9705). If you need more information, call the phone number at the bottom of this page.

There must be 8 percent (.08) Minnesota withholding on payments made to non-Minnesota construction contractors once cumulative payments made to the contractor for work done in Minnesota exceed \$50,000 in a calendar year. The 8 percent payment is deposited with the Minnesota Department of Revenue to ensure the contractor's obligations to the State of Minnesota are met for withholding, sales and use, franchise and income taxes.

Contractors are eligible for an exemption if any one of the following applies:

1. The construction contractor gives the department a bond for 8 percent of the contract secured by an insurance company licensed in Minnesota. This is to guarantee that the construction contractor will comply with Minnesota law regarding withholding, sales and use, franchise and income taxes.
2. The construction contractor gives the department a cash surety. A cash surety is evidence of a savings account, deposit, or certificate of deposit in, or issued by, a state bank, national bank, or savings and loan association doing business in Minnesota. Interest and dividends earned on the principal amount may be retained by the contractor.
3. The construction contractor has a payment and performance bond required by government agencies.
4. The construction contractor has done construction work in Minnesota during the past three calendar years and has fully complied with Minnesota law regarding withholding, sales and use, franchise and income taxes.

Construction contractors can apply for an exemption from Minnesota surety deposit requirements by filing Form SDE, *Exemption from Surety Deposits for Non-Minnesota Contractors*.

If the contractor is not exempt, whoever hires the construction contractor is required to withhold the surety deposit from each payment made to the contractor. Form SDD, *Surety Deposits for Non-Minnesota Contractors*, is used to make the surety deposit.

The department will hold the surety deposits until the construction contractor's state tax obligations are considered fulfilled. The construction contractor can apply for a refund after the project is completed using Form SDR, *Refund of Surety Deposits for Non-Minnesota Contractors*. The department will refund, with interest, any amounts held as surety.

In addition, non-Minnesota construction contractors who are carrying on a trade or business as a sole proprietor and who work in Minnesota, are required to have 2 percent withheld from payments of \$600 or more. See Fact Sheet 18 for more information.

Non-Minnesota construction contractors doing work for Minnesota subdivisions (counties, cities, school districts, etc.) must file Form IC134, *Withholding Affidavit for Contractors*, in addition to complying with this surety provision.

Information and assistance

Forms, fact sheets and the withholding instruction booklet are available on our website at www.taxes.state.mn.us. If you don't have Internet access or have questions about your withholding responsibilities, call our office at the number below.

Withholding Tax Division, Mail Station 6501, St. Paul, MN 55146-6501
Phone: 651-282-9999 or 1-800-657-3594 (outside the MN metro area)
Minnesota Relay 711 (TTY)
E-mail: withholding.tax@state.mn.us

This fact sheet is intended to help you become more familiar with Minnesota tax laws and your rights and responsibilities under the laws. Nothing in this fact sheet supersedes, alters, or otherwise changes any provisions of the tax law, administrative rules, court decisions or revenue notices. Alternative formats available upon request.

Surety Deposits for Non-Minnesota Contractors

Please print

Business entity or Minnesota government unit making deposit			Contact person		
Contact person's address			Daytime phone ()		
Name of non-Minnesota contractor	Address	City	State	Zip code	
Minnesota tax ID number	Project description/number				

Date of payment _____

Deposit

- | | | |
|---|---|-----|
| 1 Gross payment made to the contractor | 1 | |
| 2 Withholding rate | 2 | .08 |
| 3 Amount to withhold from payment (multiply line 1 by line 2) | 3 | |
- Send this amount to the address below. Make check payable to Minnesota Revenue.

Mail to: Minnesota Revenue, Mail Station 6501, St. Paul, MN 55146-6501

Instructions for Form SDD

If you're a person, cooperative, business or government unit that has hired a non-Minnesota contractor to perform construction work in Minnesota and the project is over or expected to go over \$50,000 (cumulative per calendar year) you must withhold 8 percent of each payment made to the contractor unless they have received an exemption.

Use Form SDD to make the deposits with the Minnesota Department of Revenue. Notify the contractor of the date and amount of the deposit because the contractor will need that information when requesting a refund.

Information and assistance

If you have questions or need help completing this form, call (651) 282-9999 or 1-800-657-3594. TTY: Call 711 for Minnesota Relay.

We'll provide information in an alternative format upon request to persons with disabilities.

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
Home Addresses, including city, state, & zip code

Firm -- Name
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. At least 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.

City of Duluth

Indemnification & Insurance Requirements

(Updated February 16, 2011)

(Please Be Sure These Requirements Can Be Met Before Submitting Your Response)

INDEMNIFICATION CLAUSE

The Contractor will defend, indemnify and save the City harmless from all costs, charges, damages, and loss of any kind that may grow out of the matter covered by this contract. Said obligation does not include indemnification of the City for claims of liability arising out of the sole negligent or intentional acts or omissions of City but shall include but not be limited to the obligation to defend, indemnify and save harmless the City in all cases where claims of liability against the City arise out of acts or omissions of City which are derivative of the negligence or intentional acts or omissions of Contractor such as, and including but not limited to, the failure to supervise, the failure to warn, the failure to prevent such act or omission by Contractor and any other such source of liability. In addition, Contractor will comply with all local, state and federal laws, rules and regulations applicable to this contract and to the work to be done and things to be supplied hereunder.

INSURANCE

- a. Contractor shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota, which insurance shall indemnify Contractor and City from all liability described in the paragraph above, subject to provisions of subparagraph below.
 - (1) Worker's compensation in accordance with the laws of the state of Minnesota.
 - (2) Public Liability and Automobile Liability Insurance with limits not less than **\$1,500,00** Single Limit, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance; shall be in a company approved by the city of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability.
 - (3) City of Duluth shall be named as **Additional Insured** under the Public Liability, Excess/Umbrella Liability* and Automobile Liability, or as an alternate, Contractor may provide Owners-Contractors Protective policy, naming itself and the City of Duluth. Contractor shall also provide evidence of Statutory Minnesota Worker's Compensation Insurance. Contractor to provide Certificate of Insurance evidencing such coverage with 30-days notice of cancellation, non-renewal or material change provisions included. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Contractor's interests and liabilities.

**An umbrella policy with a "following form" provision is acceptable if written verification is provided that the underlying policy names the City of Duluth as an additional insured.*

- (4) If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the City without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to City will render any such change or changes in said policy or coverages ineffective as against the City.
- (5) **The use of an "Acord" form as a certificate of insurance shall be accompanied by two forms – 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002) or equivalent, as approved by the Duluth City Attorney's Office.**
- b. The insurance required herein shall be maintained in full force and effect during the life of this Agreement and shall protect Contractor, its employees, agents and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by Contractor, its employees, agents and representatives in the negligent performance of work covered by this Agreement.
- c. Certificates showing that Contractor is carrying the above described insurance in the specified amounts shall be furnished to the City prior to the execution of this Contract and a certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Contract.
- d. The City shall be named as an additional insured on each liability policy other than the workers' compensation policies of the Contractor.
- e. The certificates shall provide that the policies shall not be changed or canceled during the life of this Contract without at least 30 days advanced notice being given to the City.
- f. Contractor shall be required to provide insurance meeting the requirements of this Paragraph unless Contractor successfully demonstrates to the satisfaction of the City Attorney, in the exercise of his or her discretion, that such insurance is not reasonably available in the market. If Contractor demonstrates to the satisfaction of the City Attorney that such insurance is not reasonably available, the City attorney may approve an alternative form of insurance which is reasonably available in the market which he or she deems to provide the highest level of insurance protection to the City which is reasonably available.

Procedure verified by:

Don Douglas, Claims Adjuster
Duluth City Attorney's Office

Date _____

PRE-2004 CG 2010

A. **Section II - Who Is an Insured** is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

NOTICE OF CANCELLATIONS ENDORSEMENT IL-7002 (10-90)

All Coverage Parts included in this policy are subject to the following condition: If we cancel this policy for any reason other than non-payment of premium, we will mail advance notice to the person(s) or organization(s) as shown in the Schedule.

Schedule	
Person or Organization (Name and Address)	Advance Notice (Days)
City of Duluth Purchasing Division Room 100 City Hall 411 West First Street Duluth, MN 55802	30

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)



**CITY OF DULUTH
PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS: 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, 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/she is the _____ (title)
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 VALIDTY HEREOF

Dated this _____ day of _____, 20 ____

Assistant City Attorney Duluth MN

Dated this _____ day of _____, 20 ____

Finance Director Duluth MN



**CITY OF DULUTH
PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS: 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"), 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, provided however that Surety's liability to pay damages is limited to the amount of the Performance Bond as set forth above.

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

PROJECT LABOR AGREEMENT

NO STRIKE, NO LOCKOUT

PUBLIC SECTOR

CITY OF DULUTH

&

(Name of Contractor)

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AGREEMENT

This Project Labor Agreement (hereinafter, the "Agreement"), is entered into effective the _____ day of _____, 2005, by and between the various contractors engaged in the construction of facilities to be known as the (Project). The parties to this Agreement are the Building and Construction Trades Council, on behalf of its affiliated Local Unions (hereinafter "Union" or "Unions"), the City of Duluth (hereinafter "Owner") and Contractor (hereinafter "Construction Manager/General Manager," "Contractor," and "Contractors").

It is understood by the parties to this Agreement that it is the policy of the Owner that the construction work covered by this Agreement shall be contracted to Contractors who agree to be bound by the terms of this Agreement. Therefore, the Union agrees that other Contractors may execute the Agreement for the purpose of covering that work. The Construction Manager/General Contractor shall monitor compliance with this Agreement by all Contractors who through their execution of this Agreement, together with their subcontractors, have become bound hereto.

The term "Contractor" shall include all Contractors and subcontractors of whatever tier engaged in on-site construction work within the scope of this Agreement.

The Union and all signatory Contractors agree to abide by the terms and conditions contained in this Agreement with respect to the administration of the Agreement by the Owner and the performance of the construction by the Contractor of the Project. This Agreement represents the complete understanding of the parties, and it is further understood that no Contractor party is required to sign any other agreement as a condition of performing work within the scope of this Agreement. No practice, understanding or agreement between a Contractor and a Union party which is not explicitly set forth in this Agreement shall be binding on any other party unless endorsed in writing by the Project Contractor.

ARTICLE I - PURPOSE

The (Project), an undertaking of the Owner, is a public project which will employ numbers of skilled and unskilled workers. Construction of the Project will entail utilization of the construction industry in an area having multiple labor contracts and employer associations. Consequently, conflicts within labor-management relations could cause delay or disruption of the efficient completion of the project unless maximum cooperation of all segments of the construction industry is obtained. This Agreement is to establish as the minimum standards on the Project the hours and working conditions as those prevailing for the largest number of workers engaged in the same classes of work within the area.

It is in the public interest that the Project progress and be completed in an expeditious and efficient manner, free of disruption or delay of any kind. Therefore, it is essential to secure optimum productivity and to eliminate any delays in the work. In recognition of the special needs of this Project and to maintain a spirit of harmony, labor-management peace and stability during the term of this Project Labor Agreement, the parties agree to establish effective and binding methods for the settlement of all misunderstandings, disputes or grievances which may arise. Therefore, the Unions agree not to engage in any strike, slowdown or interruption of work and the Contractor agrees not to engage in any lockout.

ARTICLE II - SCOPE OF THE AGREEMENT

Section 1. This Agreement, hereinafter designated as the "Project Labor Agreement" or "Agreement," shall apply and is limited to all construction work included in all Bid Categories for the (Project), under the direction of the signatory Contractors and performed by those Contractor(s) of whatever tier which have contracts awarded for such work on and after the effective date of this Agreement with regard to the Project.

Such Project is generally described as the construction of:
(Project)

Section 2. It is agreed that all direct subcontractors of a Contractor, of whatever tier, who have been awarded contracts for work covered by this Agreement on or after the effective date of this Agreement shall be required to accept and be bound by the terms and conditions of the Project Labor Agreement.

Section 3. The provisions of this Project Labor Agreement shall apply to all craft employees represented by any Union listed in Schedule A hereto attached and shall not apply to other field personnel or managerial or supervisory employees as defined by the National Labor Relations Act.

Section 4. All employees covered by this Agreement shall be classified in accordance with work performed and paid the base hourly wage rates for those classifications as specified in the attached Schedule A.

Section 5. The Contractors agree to pay contributions to the established employee benefit funds in the amounts designated in the appropriate Schedule A.

Contractors that are not signatory to a collective bargaining agreement beyond the scope of this Agreement ("PLA contractor") may select to participate in the legally established industry health reimbursement arrangement ("HRA") plan, in lieu of contributing to the respective bona fide benefit funds as designated in Schedule A. The amount of the contribution is based on the difference between the contribution amount of the bona fide Schedule A benefit funds and the cost of the PLA contractor's bona fide non-discretionary plans. Contributions must be made on behalf of named employees. Participating contractors will submit to the Trustees of the HRA trust and plan a copy of their plan, summary plan description, and the premium structure for workers covered under the PLA contractor's bona fide, non-discretionary plans. The value of the PLA contractor's benefit plans are subject to confirmation by the Trustees of the HRA trust and plan. This may include an independent audit according to a policy as established by the Trustees. Contractors are required to submit certified payroll reports to the Trustees or authorized administrator in order to confirm compliance with the terms of the HRA trust and plan.

The Contractors adopt and agree to be bound by the written terms of the legally-established Trust Agreements (or in lieu thereof, the aforementioned HRA plan and trust including any policies) specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Trust Funds. The Contractors authorize the parties to such Trust Agreements to appoint trustees and successor trustees to administer the Trust funds and hereby ratify and accept the Trustees so appointed as if made by the Contractors.

Section 6. In the event of any conflict between any provisions of this Agreement and in the Local Area Agreements, the terms of this Agreement will be applied. In other words, where a subject covered by the provisions of this Project Labor Agreement is also covered by the Local Area Agreement the provisions of this Project Labor Agreement shall prevail. Where a subject is covered by the Local Area Agreement and not covered by this Project Labor Agreement, the Local Area Agreement provisions shall prevail.

Section 7. This Agreement shall only be binding on the signatory parties hereto and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such party.

Section 8. This Agreement shall be limited to work historically recognized as construction work. Nothing contained herein shall be construed to prohibit, restrict, or interfere with the performance of any other operation, work or function which may occur in or around the Project site or be associated with the development of the Project, or with the ongoing operations of the Owner.

Section 9. It is understood that the liability of any Contractor and the liability of the separate Unions under this Agreement shall be several and not joint. The Union agrees that this Agreement does not have the effect of creating any joint employment status between or among Owner and any Contractor.

Section 10. All workers delivering fill, sand, gravel, crushed rock, transit/concrete mix, asphalt or other similar materials and all workers removing any materials from the construction site as required by the specifications are subject to the provisions of the Minnesota state

prevailing wage law and are entitled to the appropriate area standard wage. For purposes of this contract, such materials are for specified future use and per Minnesota state prevailing wage law delivery and pickup of the above-listed materials constitutes incorporation.

ARTICLE III - UNION RECOGNITION AND REPRESENTATION

Section 1. The Contractor recognizes the Union as the sole and exclusive bargaining representative of all craft employees working on facilities within the scope of this Agreement.

Section 2. Authorized representatives of the Union shall have access to the Project, provided they do not interfere with the work of employees and further provided that such representatives fully comply with the posted visitor and security and safety rules of the Project.

ARTICLE IV - LABOR HARMONY CLAUSE

The contractor shall furnish labor that can work in harmony with all other elements of labor employed on that (Project) and shall submit a labor harmony plan to demonstrate how this will be done. "Harmony" shall include the provision of labor that will not, either directly or indirectly, cause or give rise to any work disruptions, slow downs, picketing, stoppages, or any violence or harm to any person or property while performing any work, or activities incidental thereto at the (project). The labor harmony plan should include the company's labor management policies, collective bargaining agreements if any and their expiration dates, past labor relations history, a listing of activities anticipated under this contract that may potentially cause friction with on-site workers, and procedures the company will undertake to eliminate this friction.

The contractor agrees that it shall require every lower-tier subcontractor to provide labor that will work in harmony with all other elements of labor employed in the work, and will include the provisions contained in the paragraph above, in every lower-tier subcontract let for work under this contract.

The requirement to provide labor that can work in harmony with all other elements of labor employed in the work throughout the contract performance is a material element of this contract. Failure by the contractor or any of its lower tier subcontractors to comply with this requirement shall be deemed a material breach of the contract which will subject the contractor to all rights and remedies the city of Duluth may have, including without limitation the right to terminate the contract.

ARTICLE V - WORK STOPPAGES AND LOCKOUTS

Section 1. There shall be no strike, picketing, work stoppages, slowdowns or other disruptive, activity for any reason by the Union or employees against any Contractor covered under this Agreement, and there shall be no lockout by the Contractor. Failure of any Union or employee to cross any picket line established by any union, signatory or non-signatory, or any other organization, at or in proximity to the Project site is a violation of this Article.

Section 2. Any party alleging a breach of Section 1, of Article IV shall have the right to petition a court for temporary and permanent injunctive relief. The moving party need not show the existence of irreparable harm, and shall be required to post bond only to secure payment of court costs and attorney fees as may be awarded by the court.

ARTICLE VI - DISPUTES AND GRIEVANCES

Section 1. This Agreement is intended to provide close cooperation between management and labor. The Construction Manager/General Contractor and the Building and Construction Trades Council shall each assign a representative to this Project for the purpose of assisting the Local Unions, together with the Contractor, to complete the construction of the Project economically, efficiently, continuously and without interruption, delays or work stoppages.

Each Contractor shall hold a pre-job conference with the Union and Construction Manager/General Contractor to clear up any project question and work assignments in which there is thought to be a difference in opinion. Every effort will be made to hold such conference well in advance of actual work performance.

Section 2. The Contractor, Union, and employees collectively and individually, realize the importance to all parties to maintain continuous and uninterrupted performance of the work of the Project, and agree to resolve disputes over grievances in accordance with the arbitration provisions set forth in the Local Area Agreements in effect with the Unions listed in Schedule A attached hereto.

ARTICLE VII - JURISDICTIONAL DISPUTES

Section 1. There will be no strikes, work stoppages, slowdowns, or other disruptive activity arising out of any jurisdictional dispute. Pending the resolution of the dispute, the work shall continue uninterrupted as assigned by the Contractor.

Section 2. Building construction work shall be assigned by the Contractor in accordance with the procedural rules of the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (hereinafter the "Plan"). Any jurisdictional dispute over the Contractor's assignment of work shall be settled in accordance with the provisions of the Plan.

Section 3. Where a jurisdictional dispute involves the International Brotherhood of Teamsters, it shall be referred for resolution to that International Union and the disputing International Union. The resolution of the dispute shall be reduced to writing, signed by the authorized representative of the International Unions and the Contractor. The assignments made by the Contractor shall be followed until such time as the dispute is resolved in accordance with this Section.

ARTICLE VIII - NO DISCRIMINATION

Section 1. The Contractor and Union agree that they will not discriminate against any employee or applicant for employment because of his or her membership or nonmembership in a Union or based upon race, color, religion, sex, national origin or age in any manner prohibited by law or regulation.

Section 2. Any complaints regarding application of the provisions of Section 1 should be brought to the immediate attention of the involved Contractor for consideration and resolution.

Section 3. The use of the masculine or feminine gender in this Agreement shall be construed as including both genders.

ARTICLE IX - SAVINGS AND SEPARABILITY

It is not the intention of the parties to violate any laws governing the subject matter of this Agreement. The parties hereto agree that in the event any provisions of the Agreement are finally held determined to be illegal or void as being in contravention of any applicable law, the remainder of the Agreement shall remain in full force and effect unless the part or parts so found to be void are wholly inseparable from the remaining portions of this Agreement. Further, the contractor and Union agree that if and when any and all provisions of this Agreement are finally held or determined to be illegal or void by Court of competent jurisdiction, the parties will promptly enter into negotiations concerning the substance affected by such decision for the purpose of achieving conformity with the requirements of an applicable law and the intent of the parties hereto.

ARTICLE X DURATION OF THE AGREEMENT

The Project Labor Agreement shall be effective the _____ day of _____, 2008, and shall continue in effect for the duration of the Project construction work described in Article II hereof Construction of any phase, portion, section or segment of the project shall be deemed complete when such phase, portion, section or segment has been turned over to the Owner and has received the final acceptance from the Owner's representative.

Since there are provisions herein for no strikes or lockouts in the event any changes are negotiated and implemented under a Local Area Agreement during the term of this Agreement, the Contractor agrees that, except as specified herein, such changes shall be recognized and shall apply retroactively to the termination date in the particular Local Agreement involved. Each Contractor which has a Local Agreement with a Union at the time that its contract at the project

commences shall continue it in effect with each said Union so long as the Contractor remains on the project. In the event any such Local Area Agreement expires, the Contractor shall abide by all of the terms of the expired Local Agreement until agreement is reached on a new Local Agreement, with any changes being subject to the provisions of this Agreement.

The Union agrees that there will be no strikes, work stoppages, sympathy actions, picketing, slowdowns or other disruptive activity affecting the Project by any Union involved in the negotiation of a Local Area Agreement nor shall there be any lockout on this Project affecting the Union during the course of such negotiations.

IN WITNESS WHEREOF the parties have entered into this Agreement to be effective as of the day and year above written.

DULUTH BUILDING AND
CONSTRUCTION TRADES COUNCIL

CONTRACTOR

By: _____

By: _____

Its _____
(Printed Name/Title)

Its _____
(Printed Name/Title)

Date: _____

Date: _____

CITY OF DULUTH

By: _____
Mayor

Attest:

City Clerk

Date: _____

City Auditor
Date: _____

Assistant City Attorney
Date: _____

SCHEDULE "A"

- A1 Asbestos Workers Local 49
- A-2 Boilermakers Local 647
- A-3 BAC Local 1 Chapter 3 Duluth & Iron Range
- A-4 Carpenters Local 361
- A-5 Cements Masons/Plasterers Local 633
- A-6 Elevator Constructors Local 9
- A-7 IBEW Local 242
- A-8 Iron Workers Local 512
- A-9 Laborers Local 1091
- A-10 Millwrights & Machinery Erectors Local 1348
- A-11 Operating Engineers Local 49
- A-12 Painters & Allied Trades Local 106
- A-13 Plumbers & Fitters Local 11
- A-14 Roofers Local 96
- A-15 Sheet Metal Workers Local 10
- A-16 Sprinkler Fitters Local 669
- A-17 Teamsters Local 346

GENERAL CONDITIONS 4-15-11

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 noncollusion 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 judgment or claims against the City shall be allowed, the Contractor shall pay or satisfy such judgment 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, State of Minnesota, and/or City 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 therefore.

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 an 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 A 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 Axcu 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 Worker's 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= 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 three years from the date of execution of this contract.

(End of Document)

CITY OF DULUTH - PART II -
SUPPLEMENTARY GENERAL CONDITIONS FOR FEDERALLY AND/OR CITY ASSISTED ACTIVITIES
(revised 9/2/09)

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 are, if applicable.

(C) **Interest of Member or of Delegate to Congress.** No member of or 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.

(e) **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.

(f) **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 1½ times the basic hourly rate for all hours in excess of 8 per day or after 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. All hours exceeding 40 per week are subject to overtime in addition to the daily overtime requirements.

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

(i) Apprentices are not permitted to work alone under any circumstances.

(ii) 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/truckinginfo.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/contract.

(12) **Minnesota Rules 5200.1105 and 5200.1106**

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

www.revisor.leg.state.mn.us/rules/?id=5200

(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

1. 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.

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".

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 within/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

Federal Labor Standards Provisions / U.S. Department of Housing and Urban Development Office of Labor Relations

HUD-4010 (06/2009) ref. Handbook 1344.1

Previous editions are obsolete

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 1(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 1(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 1(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) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, **the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number)**. The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site.

The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request 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 contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (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 provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being 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.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(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 in 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 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 the individual 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.

(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 subparagraph (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 contractor, 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 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, (Public Law 91-54, 83 Stat 96), 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 subcontractor 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 I;
- (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)**

1. 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:
 - (iii) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (iv) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (v) 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
 - (vi) 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 in 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 or 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

Minnesota Department of Transportation and City of Duluth, Minnesota funded certified payroll forms

- Statement of Compliance Form
www.dot.state.mn.us/const/labor/lcuforms.html
- Certified Payroll Form
www.dol.gov/esa/forms/whd/WH347.pdf

U. S. Department of Housing and Urban Development and federal government funded certified payroll forms

- Statement of Compliance Form & Certified Payroll Forms
www.dol.gov/esa/forms/whd/WH347.pdf
- Fringe Benefit Form - use the second page of the MnDOT Statement of Compliance (form 21658 3/01)
www.dot.state.mn.us/const/labor/lcuforms.html

Minnesota Department of Transportation Trucking Requirements

- Month End Trucking Report
- Month End Trucking Report Statement of Compliance
- Definitions and instructions: www.dot.state.mn.us/const/labor/lcuforms.html