

Project: Gary New Duluth Community Center &
Recreation Area Improvements

Owner: City of Duluth

Issue Date: 7/31/15

Bid Date: 8/4/15

To: Prospective Bidders

From: Kraus-Anderson Construction Company
3716 Oneota Street.
Duluth, MN 55807
Phone: 218-722-3775

1.01 INTRODUCTION

- A. This Addendum is a Contract Document that modifies the original Bidding Documents dated 7/15/15 including Addendum No. 1. Acknowledge receipt of this Addendum in the space provided on the Bid Form. Failure to do so may subject Bid to disqualification.
- B. Use descriptions of changes to Specifications and Drawings in this Document only as a guide only. When Specification Sections or Drawings are issued or reissued with this Addendum the changes made in Specification or on Drawings take precedence over narrative description. When the Specification Section or Drawing is not reissued, the narrative description in this Addendum will communicate the revisions. Each Bidder shall make an independent determination of the work affected by Addendum items.
- C. This Addendum consists of 1 page(s), plus attachments listed below. Specification Sections and Drawings are not attached unless specifically indicated as (Attached).
- D. **Specification Revisions:** When Specification Sections are reissued, they will be replaced in their entirety. Revisions will be identified by a "Revision Note" that identifies which paragraph was revised, deleted or added. Revised text will be highlighted by overstriking deleted text and underlining new text.
- E. **Drawing Revisions:** Drawings replaced in their entirety with revisions identified by clouding changes and adding a "Revision Delta" near the cloud. The Revision ledger will indicate the date of the revision.

1.02 CHANGES TO KA SPECIAL REQUIREMENTS

Modifications to Bidding Requirements

- 1. 00 0110 – Table of Contents: Document is revised to incorporate current issue date changes made by this Addenda and reissued with this Addendum.

1.03 CHANGES TO PROJECT MANUAL

Modifications to Specifications

- 1. 00 5200 – Contract Forms: AIA A132-2009 Standard Form of Agreement Between Owner and Contractor, AIA 232- 2009 General Conditions of Construction Contract.
- 2. 01 1220 – 32.D Work Scope for Permeable Pavers
- 3. 01 1220 – 33.A Work Scope for Site Utilities – Add City Construction Standards

1.04 CHANGES TO DRAWINGS

Modifications to Project Drawings

- 1. RCP Pipe Addendum #1 dated 7/31/15
- 2. L1.3 – Lighting Plan dated 7/10/15 attached
- 3. Sheets 1 – 12 Shelter Plans & Specifications

1.05 OTHER

- 1. Pre-Bid Meeting Notes, Questions & Answers

-- End of Addendum --

Introductory Information

00 0001	Cover Page		
00 0111	Table of Contents for Kraus-Anderson's Front-End Documents		

Procurement Requirements

00 1110	Advertisement for Bids		
00 2100	Instructions to Bidders		
00 4100	Bid Form		
	Attachment A – Responsible Contractor Form		
	Attachment B – Affidavit of Non-Collusion		
	Attachment C – EEO Form		

Contract Forms and Conditions of the Contract

00 5200	Contract Forms		
	AIA 132-2009 Standard Form of Agreement Between Owner and Contractor		
	AIA 232-2009 General Conditions of the Contract for Construction		
00 6110	Performance and Payment Bond Form - City of Duluth Bond Forms		
00 6216	Certificate of Insurance Form (See General Conditions)		
00 7200	General Conditions of the Contract for Construction AIA 232-		
00 7343	Wage Determination Schedule		
	Project Labor Agreement – PLA		

Division 01 - General Requirements for Subcontractors

01 1100	Project Summary		
01 1200	Index of Work Scope Categories		
01 1210	Work Scope - General Requirements for all Contracts		
01 1220	Work Scope Index		
01 1220 10.A	Work Scope for 10.A: Protected Covers		
01 1220 26.A	Work Scope for 26.A: Electrical – Site Lighting		
01 1220 31.A	Work Scope for 31.A: Site Clearing, Earthwork and Subdrainage		
01 1220 32.A	Work Scope for 32.A: Asphalt Paving		
01 1220 32.B	Work Scope for 32.B: Concrete Paving		
01 1220 32.C	Work Scope for 32.C: Chain Link Fencing		
01 1220 32.D	Work Scope for 32.D: Permeable Paver Package		
01 1220 32.E	Work Scope for 32.E: Irrigation Package		
01 1220 32.F	Work Scope for 32.F: Landscaping Package		
01 1220 33.A	Work Scope for 33.A: Site Utilities Package		

Section 00 0111 - Table of Contents

01 2100	Allowances		
01 2200	Unit Prices		
01 2300	Alternates		
01 2900	Payment Procedures		
01 3100	Project Management and Coordination		
01 3210	Project Schedule Requirements		
01 3300	Submittal Procedures		
01 4400	Quality Assurance Procedures		
01 5010	Temporary Facilities and Controls		
01 6000	Product Requirements		
01 6200	Product Options		
01 7710	Procedures for Project Closeout		

-- End --

Section 00 4100 – Bid Form

PROJECT: Gary New Duluth Community Center &
Recreation Area Improvements

BID TO: Kraus-Anderson Construction Company
On Behalf of the Owner, City of Duluth
City Hall,
Duluth, MN 55802

BID FROM:

(Name of firm or company submitting bid)

(Address of firm or company submitting bid)

(City, State, Zip Code)

(Contact Person, Telephone Number, Fax Number)

1.01 ACKNOWLEDGMENTS

- A. The undersigned Bidder agrees, if this Bid is accepted, to enter into an agreement with the Project Owner, in the form included in the Special Requirements, to perform and furnish the Work as specified or indicated in the Bidding Documents for the Bid Price and within the time constraints outlined in the Preliminary Project Schedule, and will perform in accordance with the other terms and conditions of the Contract Documents.
- B. In submitting this Bid, Bidder represents, as more fully set forth in the Agreement, that:
1. This Bid will remain subject to acceptance for **60 days** after the day of Bid Opening.
 2. Owner has the right to accept or reject any or all Bid.
 3. Bidder will sign and submit the Agreement with the bonds and other documents required by the Bidding Documents within **10 days** after the date of Notice of Award.
 4. Bidder has visited the site and become familiar with the general, local, and site conditions,
 5. Bidder is familiar with federal, state, and local laws and regulations applicable for this project.
 6. Bidder has examined Bidding Documents, Work Scope Descriptions, Preliminary Project Schedule, and other conditions affecting the Work and has correlated information known to Bidder.
 7. Bidder agrees to commence Work when directed by Kraus-Anderson Construction Company to proceed by providing labor and materials required to complete the Work Scope in accordance with the Contract Documents to achieve Substantial Completion of this Work Scope within the time constraints outlined.
 8. Bidder represents this Bid is genuine and not made in the interest or on behalf of an undisclosed person, firm, or corporation; and is not submitted in conformity with an agreement or rules of a group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited another Bidder to submit a false bid; Bidder has not solicited or induced a person, firm or corporation to refrain from bidding; Bidder has not sought by collusion to obtain for itself an advantage over another Bidder.

1.02 ADDENDA RECEIVED

- A. We hereby acknowledge receipt of the following Addenda and other Clarifications affecting this bid:

Addendum Number _____	Date Issued _____
Addendum Number _____	Date Issued _____
Addendum Number _____	Date Issued _____

Section 00 4100 – Bid Form

1.03 BASE BID

- A. Pursuant to the Contract Documents, Addenda, and Kraus-Anderson's Special Requirements the undersigned bidder hereby agrees to complete the Work as defined in the Work Scope Categories identified below for the amounts:

1. Work Scope Category: _____
[insert Work Scope Number and Work Scope Description here]

Lump-Sum Price of _____ Dollars / \$ _____

2. Work Scope Category: _____
[insert Work Scope Number and Work Scope Description here]

Lump-Sum Price of _____ Dollars / \$ _____

3. Work Scope Category: _____
[insert Work Scope Number and Work Scope Description here]

Lump-Sum Price of _____ Dollars / \$ _____

4. Work Scope Category: _____
[insert Work Scope Number and Work Scope Description here]

Lump-Sum Price of _____ Dollars / \$ _____

5. Work Scope Category: _____
[insert Work Scope Number and Work Scope Description here]

Lump-Sum Price of _____ Dollars / \$ _____

6. Work Scope Category: _____
[insert Work Scope Number and Work Scope Description here]

Lump-Sum Price of _____ Dollars / \$ _____

- B. Combined Work Scope Proposal: If Bidder submits a combined bid containing more than one Work Scope Category, Bidder must subdivide labor, materials, and taxes by applicable Work Scope Category. Kraus-Anderson reserves the right to award subcontracts on individual Work Scope Categories and are not bound to award contract as a whole.

Work Scope Category: _____

_____ [insert Work Scope Number and Work Scope Description here]

Combined Lump-Sum Price of _____ Dollars / \$ _____

1.04 RESPONSIBLE CONTRACTOR AFFIDAVIT OF COMPLIANCE

- C. Bidder represents and warrants that it has fully completed its Responsible Contractor Affidavit of Compliance (“Compliance Affidavit”) and has attached its Compliance Affidavit to this Bid Form as Attachment A, which represents Bidder’s signed statement under oath by an owner or officer of the contractor verifying compliance with each of the minimum criteria in Minnesota Statute § 16C.285, subd. 3.
- D. Bidder acknowledges that its failure to submit its fully completed Compliance Affidavit with its bid or meet the minimum criteria in Minnesota Statute § 16C.285, subd. 3 will render Bidder ineligible to be awarded a contract or perform work on the project. Bidder further acknowledges that any false statement it makes under oath regarding compliance with the minimum criteria in Minnesota Statute § 16C.285, subd. 3 will render Bidder ineligible to be awarded a contract and may result in termination of a contract awarded to Bidder.
- E. Bidder represents and warrants that it has included a list of its first-tier subcontractors that it intends to retain for work on the project on Attachment A-1 of its Compliance Affidavit, and that it has obtained a Compliance Affidavit from all such first-tier subcontractors, which shall be made available upon request of the Owner.
- F. Bidder represents and warrants that it shall obtain a Compliance Affidavit from each additional subcontractor it retains on the project after submitting its Compliance Affidavit, and Bidder shall submit a supplemental verification, using Attachment A-2 to the Compliance Statement, within 14 days of retaining the additional subcontractors, in accordance with Minnesota Statute § 16C.285, subd. 3. This requirement applies during the solicitation process and continues through the term of any awarded contract.

1.05 BIDDER IDENTIFICATION

We are:

☐ Incorporated in the State of

☐ a Partnership

☐ a Proprietorship

Company Name: _____

By: _____

Affix Corporate Seal

Signed: _____

Title: _____

Company Address: _____

Phone: _____

Email Address: _____

License No.: _____

-- End --

ATTACHMENT A

RESPONSIBLE CONTRACTOR VERIFICATION AND CERTIFICATION OF COMPLIANCE

PROJECT TITLE: _____

Minn. Stat. § 16C.285, Subd. 7. **IMPLEMENTATION.** ... any prime contractor or subcontractor that does not meet the minimum criteria in subdivision 3 or fails to verify that it meets those criteria is not a responsible contractor and is not eligible to be awarded a construction contract for the project or to perform work on the project...

Minn. Stat. § 16C.285, Subd. 3. **RESPONSIBLE CONTRACTOR, MINIMUM CRITERIA.** "Responsible contractor" means a contractor that conforms to the responsibility requirements in the solicitation document for its portion of the work on the project and verifies that it meets the following minimum criteria:

- | | |
|-----|---|
| (1) | <p>The Contractor:</p> <ul style="list-style-type: none">(i) is in compliance with workers' compensation and unemployment insurance requirements;(ii) is currently registered with the Department of Revenue and the Department of Employment and Economic Development if it has employees;(iii) has a valid federal tax identification number or a valid Social Security number if an individual; and(iv) has filed a certificate of authority to transact business in Minnesota with the Secretary of State if a foreign corporation or cooperative. |
| (2) | <p>The contractor or related entity is in compliance with and, during the three-year period before submitting the verification, has not violated section 177.24, 177.25, 177.41 to 177.44, 181.13, 181.14, or 181.722, and has not violated United States Code, title 29, sections 201 to 219, or United States Code, title 40, sections 3141 to 3148. For purposes of this clause, a violation occurs when a contractor or related entity:</p> <ul style="list-style-type: none">(i) repeatedly fails to pay statutorily required wages or penalties on one or more separate projects for a total underpayment of \$25,000 or more within the three-year period;(ii) has been issued an order to comply by the commissioner of Labor and Industry that has become final;(iii) has been issued at least two determination letters within the three-year period by the Department of Transportation finding an underpayment by the contractor or related entity to its own employees;(iv) has been found by the commissioner of Labor and Industry to have repeatedly or willfully violated any of the sections referenced in this clause pursuant to section 177.27;(v) has been issued a ruling or findings of underpayment by the administrator of the Wage and Hour Division of the United States Department of Labor that have become final or have been upheld by an administrative law judge or the Administrative Review Board; or(vi) has been found liable for underpayment of wages or penalties or misrepresenting a construction worker as an independent contractor in an action brought in a court having jurisdiction. Provided that, if the contractor or related entity contests a determination of underpayment by the Department of Transportation in a contested case proceeding, a violation does not occur until the contested case proceeding has concluded with a determination that the contractor or related entity underpaid wages or penalties;* |

(3)	The contractor or related entity is in compliance with and, during the three-year period before submitting the verification, has not violated section 181.723 or chapter 326B. For purposes of this clause, a violation occurs when a contractor or related entity has been issued a final administrative or licensing order;*
(4)	The contractor or related entity has not, more than twice during the three-year period before submitting the verification, had a certificate of compliance under section 363A.36 revoked or suspended based on the provisions of section 363A.36, with the revocation or suspension becoming final because it was upheld by the Office of Administrative Hearings or was not appealed to the office;*
(5)	The contractor or related entity has not received a final determination assessing a monetary sanction from the Department of Administration or Transportation for failure to meet targeted group business, disadvantaged business enterprise, or veteran-owned business goals, due to a lack of good faith effort, more than once during the three-year period before submitting the verification;*
	* Any violations, suspensions, revocations, or sanctions, as defined in clauses (2) to (5), occurring prior to July 1, 2014, shall not be considered in determining whether a contractor or related entity meets the minimum criteria.
(6)	The contractor or related entity is not currently suspended or debarred by the federal government or the state of Minnesota or any of its departments, commissions, agencies, or political subdivisions; and
(7)	All subcontractors that the contractor intends to use to perform project work have verified to the contractor through a signed statement under oath by an owner or officer that they meet the minimum criteria listed in clauses (1) to (6).

Minn. Stat. § 16C.285, Subd. 5. **SUBCONTRACTOR VERIFICATION.**

A prime contractor or subcontractor shall include in its verification of compliance under subdivision 4 a list of all of its first-tier subcontractors that it intends to retain for work on the project.

If a prime contractor or any subcontractor retains additional subcontractors on the project after submitting its verification of compliance, the prime contractor or subcontractor shall obtain verifications of compliance from each additional subcontractor with which it has a direct contractual relationship and shall submit a supplemental verification confirming compliance with subdivision 3, clause (7), within 14 days of retaining the additional subcontractors.

A prime contractor shall submit to the contracting authority upon request copies of the signed verifications of compliance from all subcontractors of any tier pursuant to subdivision 3, clause (7). A prime contractor and subcontractors shall not be responsible for the false statements of any subcontractor with which they do not have a direct contractual relationship. A prime contractor and subcontractors shall be responsible for false statements by their first-tier subcontractors with which they have a direct contractual relationship only if they accept the verification of compliance with actual knowledge that it contains a false statement.

Minn. Stat. § 16C.285, Subd. 4. **VERIFICATION OF COMPLIANCE.**

A contractor responding to a solicitation document of a contracting authority shall submit to the contracting authority a signed statement under oath by an owner or officer verifying compliance with each of the minimum criteria in subdivision 3 at the time that it responds to the solicitation document.

A contracting authority may accept a sworn statement as sufficient to demonstrate that a contractor is a responsible contractor and shall not be held liable for awarding a contract in reasonable reliance on that statement. Failure to verify compliance with any one of the minimum criteria or a false statement under oath in a verification of compliance shall render the prime contractor or subcontractor that makes the false statement ineligible to be awarded a construction contract on the project for which the verification was submitted.

A false statement under oath verifying compliance with any of the minimum criteria may result in termination of a construction contract that has already been awarded to a prime contractor or subcontractor that submits a false statement. A contracting authority shall not be liable for declining to award a contract or terminating a contract based on a reasonable determination that the contractor failed to verify compliance with the minimum criteria or falsely stated that it meets the minimum criteria.

CERTIFICATION

By signing this document I certify that I am an owner or officer of the company, and I swear under oath that:

- 1) My company meets each of the Minimum Criteria to be a responsible contractor as defined herein and is in compliance with Minn. Stat. § 16C.285,**
- 2) I have included Attachment A-1 with my company's solicitation response, and**
- 3) if my company is awarded a contract, I will also submit Attachment A-2 as required.**

Authorized Signature of Owner or Officer:

Printed Name:

Title:

Date:

Company Name:

NOTE: Minn. Stat. § 16C.285, Subd. 2, (c) If only one prime contractor responds to a solicitation document, a contracting authority may award a construction contract to the responding prime contractor even if the minimum criteria in subdivision 3 are not met.

ATTACHMENT A-1

FIRST-TIER SUBCONTRACTORS LIST

SUBMIT WITH PRIME CONTRACTOR RESPONSE

PROJECT TITLE: _____

Minn. Stat. § 16C.285, Subd. 5. A prime contractor or subcontractor shall include in its verification of compliance under subdivision 4 a list of all of its first-tier subcontractors that it intends to retain for work on the project. ...

FIRST TIER SUBCONTRACTOR NAMES (Legal name of company as registered with the Secretary of State)	Name of city where company home office is located

ATTACHMENT A-2

ADDITIONAL SUBCONTRACTORS LIST

PRIME CONTRACTOR TO SUBMIT AS SUBCONTRACTORS ARE ADDED TO THE PROJECT

PROJECT TITLE: _____

This form must be submitted to the Project Manager or individual as identified in the solicitation document.

Minn. Stat. § 16C.285, Subd. 5. ... If a prime contractor or any subcontractor retains additional subcontractors on the project after submitting its verification of compliance, the prime contractor or subcontractor shall obtain verifications of compliance from each additional subcontractor with which it has a direct contractual relationship and shall submit a supplemental verification confirming compliance with subdivision 3, clause (7), within 14 days of retaining the additional subcontractors. ...

ADDITIONAL SUBCONTRACTOR NAMES (Legal name of company as registered with the Secretary of State)	Name of city where company home office is located

ADDITIONAL SUBCONTRACTOR NAMES (Legal name of company as registered with the Secretary of State)	Name of city where company home office is located

SUPPLEMENTAL CERTIFICATION FOR ATTACHMENT A-2	
<p>By signing this document I certify that I am an owner or officer of the company, and I swear under oath that:</p> <p>All additional subcontractors listed on Attachment A-2 have verified through a signed statement under oath by an owner or officer that they meet the minimum criteria to be a responsible contractor as defined in Minn. Stat. § 16C.285.</p>	
Authorized Signature of Owner or Officer:	Printed Name:
Title:	Date:
Company Name:	

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;
- 4) That a family relationship between a City of Duluth employee and bidder/proposer are in non-collusion; and
- 5) 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)

**EQUAL EMPLOYMENT OPPORTUNITY EEO AFFIRMATIVE ACTION
POLICY STATEMENT & COMPLIANCE CERTIFICATE**

TO: City of Duluth, MN PROJECT NUMBER & DESCRIPTION _____

FROM: _____

(FIRM=s name, address, telephone number)

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

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

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

- B) Reports:** Unless exempted by law and regulation, the FIRM shall make available and file those reports related to equal opportunity as may be required by the City of Duluth and State and Federal compliance agencies. Requirements and Reports are defined in 41CFR60 ACompliance Responsibility for Equal Opportunity@ published by the U. S. Department of Labor which is incorporated herein by reference. Additional requirements are defined in various State and Federal Civil Rights Legislation and Rules promulgated thereunder.
- C) Nonsegregated Facilities:** The FIRM certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The FIRM certifies that it will not maintain or provide for its employees any segregated facilities at any of its establishments and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The FIRM agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this certificate. As used in this Certification, the term Asegregated facilities@ means any waiting rooms, work area, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation for entertainment area, transportation, and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise.
- D) Affirmative Action Compliance Program:** Unless exempted by regulation and law, the FIRMBif the FIRM has 50 or more employees and if the value of current contracts with the City of Duluth exceeds \$50,000Bshall prepare and maintain a written affirmative action compliance program that meets the requirement as set forth in 41CFR60.
- E) Non-Compliance:** The FIRM certifies that it is not currently in receipt of any outstanding letters of deficiencies, show cause, probable cause, or other such notification of non-compliance with EEO Laws and Regulations.

- F) **Employment Goals - AConstruction@ Projects:** It shall be the goal of the FIRM if the PROJECT is of a construction nature that in all on-site employment generated that no less than 3% of the on-site workforce will be minority employees and that no less than 7% of the on-site workforce will be female employees. Further, it is the goal of the FIRM if the PROJECT is of a construction nature that in all on-site employment generated that no less than 3% of the work hours generated shall be worked by minority employees and that no less than 7% of the work hours generated shall be worked by female employees.
- G) **Subcontractors:** The FIRM will for all its PROJECT subcontractors regardless of tier (unless exempted by law and regulation) that received in excess of \$2,500 require that: (1) the subcontractor shall execute an AEEO Statement and Certification@ similar in nature to this AStatement and Certification@, (2) said documentation to be maintained on file with the FIRM or subcontractor as may be appropriate.

Executed this _____ day of _____, 20__ by:

Printed name and title

Signature

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



AIA[®] Document A132[™] – 2009

Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition

AGREEMENT made as of the day of in the year
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

| City of Duluth

and the Contractor:
(Name, legal status, address and other information)

for the following Project:
(Name, location and detailed description)

| Gary New Duluth Community Center

The Construction Manager:
(Name, legal status, address and other information)

| Kraus-Anderson Construction Company
3716 Oneota Street
Duluth, MN 55807

The Architect:
(Name, legal status, address and other information)

| SAS Associates
219 West First Street, Suite 350
Duluth, MN 55802

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A232[™]–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132[™]–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132[™]–2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

AIA Document A232[™]–2009 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

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User Notes:

(1884505904)

TABLE OF ARTICLES

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2	THE WORK OF THIS CONTRACT
3	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
4	CONTRACT SUM
5	PAYMENTS
6	DISPUTE RESOLUTION
7	TERMINATION OR SUSPENSION
8	MISCELLANEOUS PROVISIONS
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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

If, prior to the commencement of the Work, the Owner requires time to file mortgages, mechanics' liens and other security interests, the Owner's time requirement shall be as follows:

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than () days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

Portion of the Work

Substantial Completion Date

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:

(Check the appropriate box.)

- ☐ Stipulated Sum, in accordance with Section 4.2 below
- ☐ Cost of the Work plus the Contractor's Fee without a Guaranteed Maximum Price, in accordance with Section 4.3 below
- ☐ Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 4.4 below

(Based on the selection above, complete Section 4.2, 4.3 or 4.4 below. Based on the selection above, also complete either Section 5.1.4, 5.1.5 or 5.1.6 below.)

§ 4.2 Stipulated Sum

§ 4.2.1 The Stipulated Sum shall be (\$), subject to additions and deletions as provided in the Contract Documents.

§ 4.2.2 The Stipulated Sum is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

§ 4.2.3 Unit prices, if any:

(Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ 4.2.4 Allowances included in the Stipulated Sum, if any:

(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Allowance
------	-----------

§ 4.3 Cost of the Work Plus Contractor's Fee without a Guaranteed Maximum Price

§ 4.3.1 The Contract Sum is the Cost of the Work as defined in Exhibit A, Determination of the Cost of the Work, plus the Contractor's Fee.

§ 4.3.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)

§ 4.3.3 The method of adjustment of the Contractor's Fee for changes in the Work:

§ 4.3.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

§ 4.3.5 Rental rates for Contractor-owned equipment shall not exceed percent (%) of the standard rate paid at the place of the Project.

§ 4.3.6 Unit prices, if any:
(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ 4.3.7 The Contractor shall prepare and submit to the Construction Manager for the Owner, in writing, a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the items in Section A.1 of Exhibit A, Determination of the Cost of the Work.

§ 4.4 Cost of the Work Plus Contractor's Fee with a Guaranteed Maximum Price

§ 4.4.1 The Contract Sum is the Cost of the Work as defined in Exhibit A, Determination of the Cost of the Work, plus the Contractor's Fee.

§ 4.4.2 The Contractor's Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)

§ 4.4.3 The method of adjustment of the Contractor's Fee for changes in the Work:

§ 4.4.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

§ 4.4.5 Rental rates for Contractor-owned equipment shall not exceed percent (%) of the standard rate paid at the place of the Project.

§ 4.4.6 Unit Prices, if any:
(Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ 4.4.7 Guaranteed Maximum Price

§ 4.4.7.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed (\$), subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.
(Insert specific provisions if the Contractor is to participate in any savings.)

§ 4.4.7.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

§ 4.4.7.3 Allowances included in the Guaranteed Maximum Price, if any:
(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)

Item	Allowance
------	-----------

§ 4.4.7.4 Assumptions, if any, on which the Guaranteed Maximum Price is based:

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and upon certification of the Project Application and Project Certificate for Payment or Application for Payment and Certificate for Payment by the Construction Manager and Architect and issuance by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Construction Manager not later than the day of a month, the Owner shall make payment of the certified amount in the Application for Payment to the Contractor not later than the day of the month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment shall be made by the Owner not later than () days after the Construction Manager receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Progress Payments Where the Contract Sum is Based on a Stipulated Sum

§ 5.1.4.1 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager and Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.4.2 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.4.3 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of percent (%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.9 of the General Conditions;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of percent (%);
- .3 Subtract the aggregate of previous payments made by the Owner; and

Init.

- .4 Subtract amounts, if any, for which the Construction Manager or Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the General Conditions.

§ 5.1.4.4 The progress payment amount determined in accordance with Section 5.1.4.3 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to percent (%) of the Contract Sum, less such amounts as the Construction Manager recommends and the Architect determines for incomplete Work and unsettled claims; and
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of the General Conditions.

§ 5.1.4.5 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.4.3.1 and 5.1.4.3.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

§ 5.1.5 Progress Payments Where the Contract Sum is Based on the Cost of the Work without a Guaranteed Maximum Price

§ 5.1.5.1 With each Application for Payment, the Contractor shall submit the cost control information required in Exhibit A, Determination of the Cost of the Work, along with payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 5.1.5.2 Applications for Payment shall show the Cost of the Work actually incurred by the Contractor through the end of the period covered by the Application for Payment and for which the Contractor has made or intends to make actual payment prior to the next Application for Payment.

§ 5.1.5.3 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take the Cost of the Work as described in Exhibit A, Determination of the Cost of the Work;
- .2 Add the Contractor's Fee, less retainage of percent (%). The Contractor's Fee shall be computed upon the Cost of the Work described in that Section at the rate stated in that Section; or if the Contractor's Fee is stated as a fixed sum, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract retainage of percent (%) from that portion of the Work that the Contractor self-performs;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Article 5 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Construction Manager or Architect has withheld or withdrawn a Certificate for Payment as provided in Section 9.5 of AIA Document A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition.

§ 5.1.5.4 The Owner, Construction Manager and Contractor shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 5.1.5.5 In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Construction Manager and Architect have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Article 5 or other supporting data; that the Construction Manager and Architect have made exhaustive or continuous on-site inspections; or that the Construction Manager and Architect have made examinations to ascertain how or for what purposes the Contractor has used

amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 5.1.5.6 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.1.6 Progress Payments Where the Contract Sum is Based on the Cost of the Work with a Guaranteed Maximum Price

§ 5.1.6.1 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 5.1.6.2 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager and Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.6.3 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 5.1.6.4 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.10 of AIA Document A232-2009;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Contractor's Fee, less retainage of percent (%). The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 4.4.2 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of percent (%) from that portion of the Work that the Contractor self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.6.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Construction Manager or Architect have withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A232-2009.

§ 5.1.6.5 The Owner and the Contractor shall agree upon a (1) mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 5.1.6.6 In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Construction Manager or Architect have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 5.1.6.1 or other supporting data; that the

Construction Manager or Architect have made exhaustive or continuous on-site inspections; or that the Construction Manager or Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 5.1.6.7 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2 of AIA Document A232–2009, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work, pursuant to Exhibit A, Determination of the Cost of the Work when payment is on the basis of the Cost of the Work, with or without a Guaranteed Maximum payment; and
- .3 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A232–2009, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A232–2009, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- ☐ Arbitration pursuant to Section 15.4 of AIA Document A232–2009.
- ☐ Litigation in a court of competent jurisdiction.
- ☐ Other: *(Specify)*

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 Where the Contract Sum is a Stipulated Sum

§ 7.1.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2009.

§ 7.1.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2009.

§ 7.2 Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price

§ 7.2.1 Subject to the provisions of Section 7.2.2 below, the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2009.

§ 7.2.2 The Contract may be terminated by the Owner for cause as provided in Article 14 of AIA Document A232–2009; however, the Owner shall then only pay the Contractor an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Sections 4.3.2 or 4.4.2, as applicable, or, if the Contractor's Fee is stated as a fixed sum, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner.

§ 7.2.3 If the Owner terminates the Contract for cause when the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, and as provided in Article 14 of AIA Document A232–2009, the amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A232–2009 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed the amount calculated in Section 7.2.2.

§ 7.2.4 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 7.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 7, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 7.2.5 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2009; in such case, the Contract Sum and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A232–2009, except that the term 'profit' shall be understood to mean the Contractor's Fee as described in Sections 4.3.2 and 4.4.2 of this Agreement.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A232–2009 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

%

§ 8.3 The Owner's representative:
(Name, address and other information)

§ 8.4 The Contractor's representative:
(Name, address and other information)

Init.

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

§ 8.6.1 The Contractor shall provide the City with executed copies of Exhibits A and B hereto, and shall comply with all provisions therein.

§ 8.6.2 The Contractor shall comply with the requirements of Section 16.7 of the General Conditions with respect to the Minnesota Responsible Contractor Law, including, without limitation, providing the Owner with the required Responsible Contractor Verification attached hereto as Exhibit C.

§ 8.6.3 The Contractor shall execute and agree to be bound by the terms of the City of Duluth Project Labor Agreement attached hereto as Exhibit D.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A132–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition.

§ 9.1.2 The General Conditions are, AIA Document A232–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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§ 9.1.4 The Specifications:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Date	Pages
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§ 9.1.5 The Drawings:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
--------	-------	------

§ 9.1.6 The Addenda, if any:

Number	Date	Pages
--------	------	-------

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

Init.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents are:

- .1 AIA Document A132™–2009, Exhibit A, Determination of the Cost of the Work, if applicable.
- .2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
- .3 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
- .4 Other documents, if any, listed below:
(List here any additional documents which are intended to form part of the Contract Documents. AIA Document A232–2009 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Exhibit A – Affidavit of Non-Collusion

Exhibit B – Equal Employment Opportunity EEO Affirmative Action Policy Statement and Compliance Certificate

Exhibit C – Responsible Contractor Verification

Exhibit D – City of Duluth Project Labor Agreement

Exhibit E – City of Duluth Performance Bond

Exhibit F – City of Duluth Payment Bond

ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A232–2009.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A232–2009.)

Type of Insurance or Bond

Limit of Liability or Bond Amount (\$0.00)

Bonds shall be provided on the bond forms attached hereto as Exhibits E and F.

This Agreement is entered into as of the day and year first written above.

OWNER (Signature)

CONTRACTOR (Signature)

(Printed name and title)

(Printed name and title)

Init.



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

ACKNOWLEDGEMENTS

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

This instrument was acknowledged before me on _____
by _____.

Notary Seal

Notary Public

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

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

Notary Seal

Notary Public

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

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 ____



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



AIA[®] Document A232[™] – 2009

General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

for the following PROJECT:

(Name, and location or address)

| Gary New Duluth Community Center

THE CONSTRUCTION MANAGER:

(Name, legal status and address)

THE OWNER:

(Name, legal status and address)

THE ARCHITECT:

(Name, legal status and address)

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A132[™]–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132[™]–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132[™]–2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

Init.

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2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 5.3, 5.4.1.1, 8.2.2, 9.4, 9.5.1, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 12.2.2, 12.2.4, **13.3**, 13.5.2, 14, 15.4.1
Written Orders
1.1.1, 2.3, 3.9, 7, 8.2.2, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents. The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement), and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, Performance Bond or Performance-Labor Material Bond, if required, Contractor's Bid, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, or portions of addenda relating to bidding requirements).

§ 1.1.2 The Contract. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

§ 1.1.3 The Work. The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. To the extent the Contractor has entered into an A132-2009 Materials Contract with the Owner for the Project (the "Materials Contract"), the Work under the Materials Contract means the purchase by the Contractor, acting as Purchasing Agent for the Owner, of the materials, supplies or equipment (collectively the "Tax Exempt Materials") for the Project, exempt from sales tax, and specifically excludes any taxable materials to be incorporated into the Project. To the extent the Contractor has entered into an A132-2009 Labor and Taxable Material Contract for the Project (the "Labor Contract"), the Work under the Labor Contract does not include any Tax Exempt Materials.

§ 1.1.4 The Project. The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other Multiple Prime Contractors and by the Owner's own forces, including persons or entities under separate contracts not administered by the Construction Manager.

§ 1.1.5 The Drawings. The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 The Specifications. The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker. The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor, in proper operating condition. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade, unless it is specified that a subcontract include specific phases or elements to complete a certain part of the Work for reasons of coordination or responsibility. Where the Specification has been divided into sections, it is for convenience in use. The Architect assumes no responsibility for proper placement of phases of the Work into the proper division or section nor the arrangement of Work shown on the Drawings. The Architect shall not be obligated to enter into jurisdictional or other disputes as a result of the organization, arrangement or location of parts of the Work in Specifications or on Drawings, nor to serve as arbiter to establish subcontract limits. Unless otherwise specified, the scope of work of each section shall be to furnish labor, materials, equipment, skill, erection, installation, services and related items for the phase of work of that section, as required by the Drawings, as specified or as otherwise required to provide and complete the entire work of the section.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.5 The general character and scope of the Work is called for by the Contract Documents. Where a portion of the Work is fully drawn and the remainder is merely indicated, the portion fully drawn shall apply to all similar parts of the Work. Drawings intended primarily as information for one trade may not necessarily show the work of other trades, which shall not be construed as there being no related materials or adjacent work.

§ 1.2.6 Figured dimensions shall be followed in preference to measurement by scale. In the event of discrepancies between Drawings, between Drawings and Specifications or between Specifications, the intent shall be interpreted by the Architect, which shall be binding on the Contractor. Where a dimension may be missing, the Work shall be accomplished in accordance with the directions and dimensions provided by the Architect. Dimensions on Drawings, as well as detail Drawings themselves, are subject in every case to measurements of existing, adjacent, incorporated and completed work which shall be taken by the Contractor before undertaking any work dependent upon such data. Dimensions pertaining to the Work shall be verified at site by Contractor.

§ 1.2.7 Where Specifications are of the abbreviated or "streamlined" type, they shall be construed as complete sentences, as shall notes on the drawings. Omission of Words such as "the", "the Contractor shall", and "as shown on the drawings" is intentional. The words "shall" or "shall be" are to be supplied by inference. Imperative or directive instruction, directions or specifications apply and refer to the Contractor. The words "symmetrical" and "similar" are used in the general sense and need not mean "identical".

§ 1.2.8 Where a number is specified (as for gauges, weights, temperatures, an amount of time, and similar references) and the specified number cannot be obtained, the number shall be interpreted as the next better, as available.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect, or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 Transmission of Data in Digital Form

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Article 4, the Construction Manager and the Architect do not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Information and Services Required of the Owner

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Unless otherwise provided under the Contract Documents, the Owner, through the Construction Manager, shall secure and pay for the building permit.

§ 2.2.3 Except as otherwise required by the Contract Documents, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.2.6 The Owner shall endeavor to forward all communications to the Contractor through the Construction Manager and shall contemporaneously provide the same communications to the Architect about matters arising out of or relating to the Contract Documents.

§ 2.3 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to the Contractor and its surety, if any, to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies or require the Contractor's surety to assume the obligations of the Contractor. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor or its surety the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants' additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior concurrence of the Architect, after consultation with the Construction Manager. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor or its surety shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The plural term "Multiple Prime Contractors" refers to persons or entities who perform construction under contracts with the Owner that are administered by the Construction Manager. The term does not include the Owner's own forces, including persons or entities under separate contracts not administered by the Construction Manager.

§ 3.1.3 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.4 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. The Contractor also represents that all Contract Documents for the Project have been examined, including those intended for work of trades not normally performed by the Contractor's own forces, and the Contractor has become thoroughly familiar with all conditions which may pertain to or affect the Work under this Contract.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the

information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Construction Manager and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Construction Manager and Architect any nonconformity discovered by or made known to the Contractor as a request for information submitted to Construction Manager in such form as the Construction Manager and Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instruction concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner, the Construction Manager, and the Architect and shall not proceed with that portion of the Work without further written instructions from the Architect, through the Construction Manager. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of the Project already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Owner shall take title to all Tax Exempt Materials at the point of delivery and the Owner retains the risk of loss for all Tax Exempt Materials.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the

Architect, in consultation with the Construction Manager, and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. All work shall be performed in the best and most workmanlike manner to the highest standards for the work. Incompetent or careless workmanship shall not be permitted by the Contractor and will not be accepted.

§ 3.4.4 The Contractor, and all those working under its jurisdiction, shall conform to labor laws of the state and all other laws, ordinances and legal requirements affecting the Work. Prior to starting work, the Contractor shall become familiar with local labor and trade conditions, skilled and unskilled, and shall conform to local conditions. The Contractor shall consider the availability of labor in the area and import labor as may be required to meet the schedule for the Work.

Unless otherwise provided in Contract Documents, all materials, equipment and other products shall be one of the brands, manufacturers or types specified. All like products for the Work shall be by the same manufacturer.

§ 3.4.5 After the Contract has been executed, the Owner and the Architect, after consultation with the Construction Manager, will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in the Contract Documents.

§ 3.4.6 By making requests for substitutions based on the preceding subsection, the Contractor:

- .1 Represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- .2 Represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;
- .3 Certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- .4 Will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

§ 3.5 Warranty

The Contractor warrants to the Owner, Construction Manager, and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform with the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Owner has the responsibility for all defective Tax Exempt Materials. If required by the Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The quality required under this Warranty shall, as a minimum, equal all standards or requirements of form, function, durability, performance, type, strength, efficiency, service, appearance or other criteria established by the requirements of the Contract Documents.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices, and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Owner, through the Construction Manager, shall secure and pay for the building permit. The Contractor shall secure and pay for other permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall provide and pay for all bonds that may be required to accomplish the Work, including any bonds required by municipalities.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. In any instance where requirements of the Contract Documents are in excess of, but not in conflict with or violation of requirements of a public authority, the provisions of the Contract Documents shall govern.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than 7 days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect, in consultation with the Construction Manager, determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, Construction Manager, and Contractor in writing, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner, Construction Manager, and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents:

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances, except where installation is specified as part of the allowance in the Contract Documents; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.
- .4 The supplier or subcontractor for an allowance item is subject to acceptance of the Owner, Architect, and Construction Manager; and the Contractor's Purchase Order or Subcontract Agreement shall bind the supplier or subcontractor to the requirements of the Contract Documents.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner and Architect through the Construction Manager, the name and qualifications of a proposed superintendent. The Construction Manager may reply within 14 days to the Contractor in writing stating (1) whether the Owner, the Construction Manager, or the Architect has reasonable objection to the proposed superintendent or (2) that any of them require additional time to review. Failure of the Construction Manager to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner, Construction Manager or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information and the Construction Manager's approval a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project schedule to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Multiple Prime Contractors or the construction or operations of the Owner's own forces.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter update it as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Construction Manager's and Architect's approval. The Architect and Construction Manager's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Construction Manager and Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall participate with other Contractors, the Construction Manager and Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by the Construction Manager. The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the Project schedule.

§ 3.10.4 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner, Construction Manager and Architect and incorporated into the approved Project schedule.

§ 3.11 Documents and Samples at the Site

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of accepted Shop Drawings, Product Data, Samples and similar required submittals. The record documents shall be a separate set of documents used only for record purposes and kept clean and undamaged. These documents shall be available to the Architect and delivered to the Construction Manager for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect and Construction Manager is subject to the limitations of Sections 4.2.9 through 4.2.11. Informational submittals upon which the Construction Manager and Architect are not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Construction Manager or Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Construction Manager Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the Project submittal schedule approved by the Construction Manager and Architect, or in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Multiple Prime Contractors or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples and similar submittals with related documents submitted by other Multiple Prime Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner, Construction Manager, and Architect, that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been reviewed and accepted by the Architect.

§ 3.12.8 The Work shall be in accordance with accepted submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Construction Manager and Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Construction Manager and Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals,

provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the site.

§ 3.13.3 The Contractor shall return all improvements on or about the site, streets and adjacent property which are not shown to be altered, removed or otherwise changed, to the conditions which existed previously. The Contractor shall protect existing structures or other features from damage by any operation in connection with the Contract.

§ 3.13.4 Utilities or other services which are shown, or not shown but encountered or otherwise found, shall be protected by the Contractor from any damage from excavation or other work and operations of this Contract, unless or until they are abandoned. Contractor shall immediately restore any damage from its work or operations to place the utilities and services in good operating condition. If the utilities or services are shown to be abandoned or moved, they shall remain in service, and be protected by the Contractor, until new utilities and services have been provided, tested and ready for use.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents. Cutting and patching shall be kept to an absolute minimum by careful planning and through providing proper holes, sleeves, anchors, inserts or other built-ins as Work progresses and then only to the extent required to properly place, support, hang, anchor or install Work. Contractor shall restore the improvements and finishes to like-new condition, to match adjoining work and such restoration shall be performed by workers skilled in the particular type of work involved. Where finishes are patched, they shall be patched to the extent necessary to provide unbroken and unattached appearance and shall be carried to natural break points as necessary. All patching is subject to the Architect's acceptance. Unauthorized or careless cutting will not be permitted. No structural member shall be cut in a manner or to an extent which will affect the structural effectiveness, unless approved by the Architect.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner's own forces or of other Multiple Prime Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner's own forces or by other Multiple Prime Contractors except with written consent of the Construction Manager, Owner and such other Multiple Prime Contractors; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the other Multiple Prime Contractors or the Owner the Contractor's consent to cutting or otherwise altering the Work.

§ 3.14.3 Cutting and patching of construction work or excavation and backfilling in or about the building, shall be done under the general supervision of the Contractor for that phase of the Work being altered, who shall be responsible to see that patching and backfilling is accomplished by using proper labor, materials and methods consistent with the requirements for other similar construction.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner, or Construction Manager with the Owner's approval, may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner, Construction Manager and Architect access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner, Construction Manager and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner, Architect, or Construction Manager. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect through the Construction Manager.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, whether before or after substantial completion of the Project, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) but only to the extent caused by the negligent or wrongful acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. The Contractor's obligations under this Section 3.18 shall survive the completion of the Project and any termination of this Agreement.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.19 EQUAL OPPORTUNITY IN EMPLOYMENT

§ 3.19.1 Contractor shall not discriminate against any employee or applicant for employment because of sex, creed, color, religion, national origin, marital status, status with respect to public assistance, disability, age, or sexual preference. Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to the following: employment, upgrading, demotion or transfer, recruitment, recruitment advertising, layoff or termination, rates of pay or other form of compensation and selection for training, including apprenticeship. Contractor shall incorporate these same equal opportunity, antidiscrimination and affirmative action requirements into all agreements between Contractor and its Subcontractors.

§ 3.20 VERIFICATION OF FIELD CONDITIONS

§ 3.20.1 The Contractor shall take field measurements and verify field conditions with the Contract Documents and final Shop Drawings before commencing any Work. The Contractor shall promptly report errors, inconsistencies or omissions to the Architect and Construction Manager.

§ 3.20.2 No change in the Contract Sum will be allowed on account of minor differences between actual field conditions and the Contract Documents.

§ 3.21 MISCELLANEOUS CONTRACTOR RESPONSIBILITIES

§ 3.21.1 The Contractor agrees to adequately and properly protect its Work. The Contractor agrees to adhere to the Federal Occupational Safety & Health Act, state and local safety regulations, so as to avoid injury or damage to persons or property resulting from failure to do so.

§ 3.21.2 In the event the Contractor, after 24 hour written notice from the Construction Manager fails to take corrective action to ensure compliance with said safety regulations, the Construction Manager may, but shall not be obligated to, remedy the situation according to OSHA standards and charge the cost of same to the Contractor's account without further notice to the Contractor.

§ 3.21.3 The Contractor agrees to notify the Construction Manager's representative on the job site of all accidents which may occur to persons or property and shall provide the Construction Manager's representative with a copy of all accident reports on appropriate forms. All reports shall be signed by the Contractor or his authorized representative and submitted within twenty-four (24) hours of occurrence.

§ 3.21.4 The Contractor agrees that all disputes concerning the jurisdiction of trades shall be adjusted in accordance with any plan for the settlement of jurisdictional disputes which may be in effect either nationally or in the locality in which the work is being done. The Contractor shall be bound by, and shall abide by, all such adjustments and settlements of jurisdictional disputes, whether or not the Contractor is signature bound by the agreement establishing the Impartial Jurisdictional Disputes Board and/or its successors. The Contractor agrees not to cause a work stoppage due to the jurisdictional assignment of Work.

§ 3.21.5 The Contractor shall submit to the Construction Manager upon request, copies of orders placed for the various materials required for the Work or stock lists if such material is normally a stock item. Order copies need not reflect prices but should indicate, among other things, type of material, quantity, and vendor name, and address. The Contractor shall be required to submit to the Construction Manager a monthly Material Status report, or more often if required by the Construction Manager, as a prerequisite for the monthly progress payment. The Contractor shall notify the Construction Manager immediately upon learning of a change of status of any material, equipment or supplies.

§ 3.21.6 The Contractor agrees to maintain an adequate force of experienced workers and the necessary materials, supplies, and equipment to meet the requirements of the Construction Manager and other trades in order to maintain construction progress schedules, as established by the Construction Manager and Owner. In the event that Contractor's forces are, in the judgment of the Construction Manager, inadequate to meet the established schedules during the regular working hours, the Contractor agrees to work sufficient overtime hours or increase its work force to meet such schedules at no extra cost to the Construction Manager, Architect, or the Owner.

§ 3.21.7 The Contractor agrees to employ competent administrative, supervisory, and field personnel to accomplish the Work, including layout, engineering, preparation and checking of shop drawings. Such supervisory personnel shall not be changed without written consent of the Construction Manager.

§ 3.21.8 The Contractor shall insure that all construction tools, equipment, temporary facilities, and other items used in accomplishing the Work, whether purchased, rented or otherwise provided by the Contractor or provided by the others, are in a safe, sound, and good condition; capable of performing the function for which they are intended and maintained in conformance with applicable laws and regulations.

§ 3.21.9 In no event shall any act or omission on the part of the Owner, the Architect or the Construction Manager relieve the Contractor from its obligation to perform its Work in full compliance with the Contract.

§ 3.21.10 The Contractor shall be responsible to the Owner and Construction Manager for the acts and omissions of all of its employees and all of its subcontractors, their agents and employees, and all other persons performing any of the Contractor's Work.

ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER

§ 4.1 General

§ 4.1.1 The Architect is _____, referred to throughout the Contract Documents as if singular in number. The term Architect means the Architect or his authorized representative, including employees or consultants. Where "Architect" may be used relating to engineering phases of the Work, substitute the term "Engineer" therefor.

§ 4.1.2 The Construction Manager is Kraus-Anderson® Construction Company referred to throughout the Contract Documents as if singular in number. The term "Construction Manager" means the Construction Manager or the Construction Manager's authorized representative, including employees or consultants.

§ 4.1.3 Duties, responsibilities and limitations of authority of the Construction Manager and Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Construction Manager, Architect and Contractor. Consent shall not be unreasonably withheld.

§ 4.1.4 If the employment of the Construction Manager or Architect is terminated, the Owner shall employ a successor construction manager or architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.

§ 4.2 Administration of the Contract

§ 4.2.1 The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's representatives during construction until the date the Architect issues the final Certificate for Payment. The Construction Manager and Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner and Construction Manager (1) known deviations from the Contract Documents and from the most recent Project schedule prepared by the Construction Manager, and (2) defects and deficiencies observed in the Work.

§ 4.2.3 The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Construction Manager will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner reasonably informed of the progress of the Work, and will report to the Owner and Architect (1) known deviations from the Contract Documents and the most recent Project schedule, and (2) defects and deficiencies observed in the Work.

§ 4.2.4 The Construction Manager will schedule and coordinate the activities of the Contractor and other Multiple Prime Contractors in accordance with the latest approved Project schedule.

§ 4.2.5 The Construction Manager, except to the extent required by Section 4.2.4, and Architect will not have control over, or charge of, construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of or be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§ 4.2.6 **Communications Facilitating Contract Administration.** Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Construction Manager, and shall contemporaneously provide the same communications to the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with other Multiple Prime Contractors shall be through the Construction Manager and shall be contemporaneously provided to the Architect if those communications are about matters arising out of or related to the Contract Documents. Communications by and with the Owner's own forces shall be through the Owner.

§ 4.2.7 The Construction Manager and Architect will review and certify all Applications for Payment by the Contractor, in accordance with the provisions of Article 9.

§ 4.2.8 The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents and will notify each other about the rejection. The Construction Manager shall determine in general whether the Work of the Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Architect of defects and deficiencies in the Work. Whenever the Construction Manager considers it necessary or advisable, the Construction Manager will have authority to require additional inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, upon written authorization of the Owner, whether or not such Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing any of the Work.

§ 4.2.9 The Construction Manager will receive and promptly review for general conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data and Samples. Where there are Multiple Prime Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from Contractor and other Multiple Prime Contractors, and transmit to the Architect those recommended for acceptance. By submitting Shop Drawings, Product Data, Samples and similar submittals, the Construction Manager represents to the Owner and Architect that the Construction Manager has reviewed and recommended them for approval. The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect.

§ 4.2.10 The Architect will review and accept or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Upon the Architect's completed review, the Architect shall transmit its submittal review to the Construction Manager.

§ 4.2.11 Review of the Contractor's submittals by the Construction Manager and Architect is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Construction Manager and Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Construction Manager and Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Construction Manager and Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.12 The Construction Manager will prepare Change Orders and Construction Change Directives.

§ 4.2.13 The Construction Manager and the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7. and the Architect will have authority to order minor changes in the Work as provided in Section 7.4. The Architect, in consultation with the Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.14 Utilizing the documents provided by the Contractor, the Construction Manager will maintain at the site for the Owner one copy of all Contract Documents, approved Shop Drawings, Product Data, Samples and similar required submittals, in good order and marked currently to record all changes and selections made during construction. These

will be available to the Architect and the Contractor, and will be delivered to the Owner upon completion of the Project.

§ 4.2.15 The Construction Manager will assist the Architect in conducting inspections to determine the dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Architect pursuant to Section 9.8; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10. The Construction Manager will forward to the Architect a final Application and Certificate for Payment or final Project Application and Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

§ 4.2.16 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.17 The Architect will interpret and decide matters concerning performance under, and requirements of the Contract Documents on written request of the Construction Manager, Owner or Contractor through the Construction Manager. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.18 Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

§ 4.2.19 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.20 The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Architect, with the Construction Manager's recommendation. The Architect will review and respond in writing to the Construction Manager to requests for information about the Contract Documents. The Construction Manager's recommendation and the Architect's response to each request will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person, firm or entity having a direct contract or purchase order with the Contractor to provide or furnish materials, equipment, facilities, labor or services, or a combination of these, for the execution and completion of the Work or part thereof. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include other Multiple Prime Contractors or subcontractors of other Multiple Prime Contractors.

§ 5.1.2 A Sub-subcontractor is a person or entity having a direct or indirect contract or purchase order with a Subcontractor to provide or furnish materials, equipment, facilities, labor or services, or a combination of these, for the execution and completion of the Work or part thereof. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Construction Manager for review by the Owner, Construction Manager and Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work, along with a list of the actual materials or equipment such person will be furnishing. The Construction Manager may reply within 14 days to the Contractor in writing stating (1) whether the Owner, the Construction Manager or the Architect has reasonable objection to any such proposed person or entity or, (2) that the Construction Manager, Architect or Owner requires

additional time for review. Failure of the Construction Manager, Owner, or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner, Construction Manager or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. No increase in the Contract Sum shall be allowed should a substitution be required as a result of the Owner's or Architect's reasonable objection based on specified criteria on which a proposed subcontractor will be evaluated.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor Contractor or other entity.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY OTHER CONTRACTORS

§ 6.1 Owner's Right to Perform Construction with Own Forces and to Award Other Contracts

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, which include persons or entities under separate contracts not administered by the Construction Manager, and to award other contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When the Owner performs construction or operations with the Owner's own forces including persons or entities under separate contracts not administered by the Construction Manager, the Owner shall provide for coordination of such forces with the Work of the Contractor, who shall cooperate with them.

§ 6.1.3 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11 and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor and Subcontractors shall cooperate with and coordinate their work with all other Contractors and the Owner to facilitate the general progress of the Project and to prevent delaying the progress of other Contractors. The Contractor shall afford the Owner's own forces, other Multiple Prime Contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their Work, and shall connect and coordinate Contractor's Work with theirs as required by the Contract Documents. Each Contractor and Subcontractor shall obtain layout drawings, roughing-in detail sheets and other pertinent information directly from each other (not from Architect or Construction Manager) to coordinate all phases of the Work. For coordination with the Owner's equipment or materials, information shall be obtained from the Owner through the Construction Manager. After timely notification by the Contractor of the need to accomplish a particular phase or element of the Work, the other Contractors shall, within a reasonable time, perform their Work so as not to delay or impede the Contractor.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces or other Multiple Prime Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Construction Manager and Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's own forces or other Multiple Prime Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs, including costs that are payable to a separate contractor or to other Multiple Prime Contractors because of the Contractor's delays, improperly timed activities, lack of coordination with other Contractors or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of delays, improperly timed activities, damage to the Work or defective construction by the Owner's own forces or other Multiple Prime Contractors.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor causes to completed or partially completed construction or to property of the Owner, separate contractors, or other Multiple Prime Contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and other Multiple Prime Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, other Multiple Prime Contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Construction Manager, with notice to the Architect, will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Construction Manager, Architect and Contractor; a Construction Change Directive requires agreement by the Owner, Construction Manager and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.1.4 For proposed changes in the Work the costs shall be determined as provided under this Subsection 7.1.4. The Contractor shall submit an itemized list of quantities with the applicable unit costs and extended price for each, in such form and detail as required by the Construction Manager/Architect.

- .1 As a minimum, the detailed breakdown shall include and indicate the items enumerated below. Items (a) and (b) constitute the cost of labor, and items (a), (b), (c) and (d) constitute the basic costs referred to under this Article 7.
 - (a) Labor costs, itemized by each trade involved, showing the hourly rates for each, and the hours required for the change. Labor rates shall be the same for extra and credit computations and shall be the actual rate paid workmen in accordance with established management labor agreement.
 - (b) Burden on labor, which shall be only the actual costs of mandatory fringe benefits required by established agreements, taxes on labor, worker's or workmen's compensation, insurance on labor as affected by payroll, unemployment taxes and insurance, including FICA and FUTA.
 - (c) Quantities of materials, equipment and supplies, at their actual cost, with unit costs indicated.
 - (d) The cost of subcontracted work, computed in the same way as provided for under this Subsection 7.1.4.
 - (e) Overhead, profit or commission.
 - (f) Applicable sales tax on materials, added after the above computations are complete.
- .2 The maximum that will be allowed for overhead and profit, or commission, shall be as follows, expressed as a percentage of the basic cost of the change. The maximum allowable percentages for profit, overhead and commission may be less, depending on the nature, extent or complexity of the change, where the percentage is not commensurate with the responsibility and administration involved (such as the Contractor merely processing a substantial Change Order to a Subcontractor) but in no event shall they exceed the following:

	Overhead/Profit	Commission
(a) To the Contractor and/or Subcontractor for work performed with their own forces.	10%	
(b) To the Contractor for work performed by other than its own forces.	--	5%
- .3 Not more than two percentages for overhead, profit and commission will be allowed. The mark-up on any part of the Work a Subcontractor subcontracts will be limited to one overhead/profit figure in addition to the Contractor's commission, the Subcontractor and Sub-Subcontractor may divide the overhead and profit amount as they agree upon.
- .4 The burden on labor may be indicated as a dollar/cents addition to the hourly rate or may be expressed as a percentage of the extended hourly rate costs. If required by the Owner, Construction Manager or the Architect, the Contractor shall provide a detailed breakdown to justify the labor burden. The Construction Manager reserves the right to reject any labor burden which is inconsistent with other similar contractors or where the cost of fringe benefits are in excess of established labor agreements. The burden on labor shall not include any costs noted as general overhead.
- .5 Material, equipment and supply costs shall be quoted at the actual cost to the Contractor, or Subcontractor. Upon request, the Contractor (or Subcontractor) shall submit evidence to substantiate the costs. Said costs shall be quoted at trade discount prices, with quantity discounts also applied where

the quantities warrant. Cash or prompt payment discounts need not be credited. In any proposal with material, equipment and supply credits, the credit shall be based on the actual Contract cost of the material (including trade and quantity discounts) less any charges actually incurred for handling or returning a material which has been delivered. No cancellation, restocking or similar charge will be allowed unless actually incurred by the purchaser and generally will not be allowed when the product has not been shipped.

- .6 The percentages allowed for overhead, profit or commission under clause 7.1.4.2 shall be deemed to include, and no further addition allowed for: (1) field and office supervision and administration, including the field superintendent and foremen; (2) general insurance, except that listed as the labor burden; (3) use or replacement of tools; (4) shop burden; (5) equipment rental (other than specifically required additional hoisting equipment, required excavating equipment or similar equipment necessary solely as a result of the change); (6) engineering and estimating costs; (7) performance and payment (guaranty) bond; (8) cost of safety measures (including those imposed by OSHA); (9) shipping, drayage and demurrage; (10) parking charges; (11) clean up and debris removal; (12) testing; (13) permits, unless a new permit type is required; (14) or any other costs except those enumerated under clause 7.1.4.
- .7 Cost changes shall be computed by determining the basic costs enumerated under clause 7.1.4 (as further specified under this subsection), to which the overhead may be added, then the profit figure may be added and finally adding the sales tax on materials.
- .8 Subcontractors (or Sub-Subcontractors) shall compute their costs in the same way and are subject to the same conditions of what may be included in the cost and the same maximum percentages for overhead and profit. To the Subcontractor's price, the Contractor may add up to 5% commission.
- .9 For changes involving work of the Contractor with its own forces and work by a Subcontractor (or Sub-Subcontractor), the commission shall be applied directly to the Subcontractor's price, with the overhead and profit figure applied only to the Work the Contractor performs with its own forces.
- .10 For changes involving both extra and credit amounts, the overhead and profit, or commission, shall be applied only to net difference where the extra exceeds the credit.
- .11 For changes resulting in a credit in the basic costs, a reasonable allowance for overhead, profit or commission may be required to be credited the Owner, as approved by the Architect after consultation with the Construction Manager. In general, no credit for overhead, profit or commission will be required where the net change credit is minor or where the change in Work indicates it is reasonable that no credit be allowed to the Owner due to the effort, cost or responsibility of the Contractor. In the event of substantial subcontract credits, or for Work not performed by the Contractor, a reasonable overhead, profit or commission credit shall be allowed to the Owner.

§ 7.2 Change Orders

A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect and Contractor, stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Construction Manager and signed by the Owner, Construction Manager and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;

- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Construction Manager and Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Construction Manager shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Construction Manager and Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Construction Manager and Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Construction Manager shall prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order issued through the Construction Manager and shall be binding on the Owner and Contractor.

The Architect shall also have the right to make minor changes in dimensions, locations, arrangements or details to accommodate changes in other materials and equipment, improve the Work, or prevent unforeseen interference with structural or other features. Such changes shall be made without a change in the Contract Sum.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Final Completion within the Contract Time. The Work shall not be suspended or shut down, but shall progress continuously with sufficient labor at all times, unless otherwise approved by the Owner, Architect and Construction Manager.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner, Owner's own forces, Construction Manager, Architect, any of the other Multiple Prime Contractors or an employee of any of them, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending resolution of a dispute, or by other causes that the Architect, based on the recommendation of the Construction Manager, determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude the Owner's recovery of damages for delay by either party under other provisions of the Contract Documents. The Contractor's sole and exclusive remedy for delay is a right to a time extension for completion of the Contract and not damages.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 Schedule of Values

Where the Contract is based on a Stipulated Sum or Guaranteed Maximum Price, the Contractor shall submit to the Construction Manager, before the first Application for Payment and in accordance with other requirements of the Contract Documents, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager and Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. In the event there is one Contractor, the Construction Manager shall forward to the Architect the Contractor's schedule of values. If there are Multiple Prime Contractors

responsible for performing different portions of the Project, the Construction Manager shall forward the Multiple Prime Contractors' schedules of values only if requested by the Architect.

§ 9.3 Applications for Payment

§ 9.3.1 At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner, Construction Manager or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Construction Manager and Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.4 The Contractor shall submit its Application for Payment on forms as the Construction Manager or Architect may specify or direct. The Application shall be accompanied by a sworn, notarized Certificate by the Contractor, attesting to the accuracy of the amount as being for work satisfactorily complete in accordance with the Contract Documents, and that all just claims and bills for labor, materials, equipment, subcontracts and services or other expenses represented in previous Applications for Payment have been paid, such that the Contractor is entitled to the payment.

§ 9.3.5 **PROMPT PAYMENT TO SUBCONTRACTORS** In accordance with Minnesota law, the Contractor shall include, in all subcontracts and other agreements with its subcontractors and suppliers, a provision which requires the Contractor to pay any of its subcontractors and suppliers within 10 days of the Contractor's receipt of payment from the Owner, for undisputed services or supplies provided by the subcontractor or supplier. The provision shall also include the requirement that the Contractor shall pay interest of one and one-half percent (1.5%) per month or any part of a month to the subcontractor or supplier on any undisputed amount not paid on time to the subcontractor or supplier. The provision shall further provide that the minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10; for an unpaid balance of less than \$100, the Contractor shall pay the actual penalty due to the subcontractor or supplier; and a subcontractor or supplier who prevails in a civil action to collect interest penalties from the Contractor shall be awarded its costs and disbursements, including attorneys' fees, incurred in bringing the action.

§ 9.4 Certificates for Payment

§ 9.4.1 Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for

Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either issue to the Owner a Certificate for Payment, with a copy to the Construction Manager, for such amount as the Architect determines is properly due, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding certification.

§ 9.4.2 Where there are Multiple Prime Contractors performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives the Multiple Prime Contractors' Applications for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each of the Multiple Prime Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Multiple Prime Contractors' application with information from similar applications for progress payments from other Multiple Prime Contractors; (3) prepare a Project Application and Certificate for Payment; (4) certify the amount the Construction Manager determines is due all Multiple Prime Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 9.4.3 Within seven days after the Architect receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager, for such amount as the Architect determines is properly due, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors.

§ 9.4.4 The Construction Manager's certification of an Application for Payment or, in the case of Multiple Prime Contractors, a Project Application and Certificate for Payment shall be based upon the Construction Manager's evaluation of the Work and the information provided as part of the Application for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The certification will also constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

§ 9.4.5 The Architect's issuance of a Certificate for Payment or in the case of Multiple Prime Contractors, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and information provided as part of the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, that the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified.

§ 9.4.6 The representations made pursuant to Sections 9.4.4 and 9.4.5 are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Construction Manager or Architect.

§ 9.4.7 The issuance of a separate Certificate for Payment or a Project Certificate for Payment will not be a representation that the Construction Manager or Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed the Contractor's construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.4 and 9.4.5 cannot be made. If the Construction Manager or Architect is unable to issue a Certificate for Payment in the amount of the Application, the

Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.3. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the acts and omissions described in Section 3.3.2 because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect or Construction Manager withholds certification for payment under Section 9.5.1, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Construction Manager and both will reflect such payment on the next Certificate for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment or Project Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Construction Manager and Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Construction Manager will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner, Construction Manager and Architect on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner, Construction Manager nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 Issuance of a Contractor's Application and Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute an acceptance of any Work not in accordance with the Contract Documents. The Contractor and its Surety agree any issuance of a Contractor's Application and Certificate for Payment by the Architect, payment on the Contract Sum or in reducing any retaining amount, or any use or occupancy of the Work will in no way relieve them of the obligation to completely fulfill or accomplish all obligations

of the Contract, including warranty of the Work, and that they waive any actual or alleged rights of subrogation or action against the Owner or the Architect as a result of any such issuance of a Contractor's Application and Certificate for Payment, payment, or use or occupancy. At any time, the Surety shall have the right to examine the status of the Work, as well as any payments, and may request the Owner to withhold additional sums as it considers appropriate to protect its interests.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 Failure of Payment

If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Construction Manager and Architect, then the Contractor may, upon seven additional days' written notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify the Construction Manager, and the Contractor and Construction Manager shall jointly prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the list, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the list, which is not sufficiently complete in accordance with the requirements of the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion.

§ 9.8.4 When the Architect, assisted by the Construction Manager, determines that the Work or designated portion thereof is substantially complete, the Construction Manager will prepare, and the Construction Manager and Architect shall execute a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.6 After Substantial Completion, the Contractor shall coordinate his activities with the Owner's use of the substantially completed work and shall diligently complete the remaining work, without delay or interruption, within the remaining Contract Time.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor and Construction Manager shall jointly prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect after consultation with the Construction Manager.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Construction Manager, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon completion of the Work, the Contractor shall forward to the Construction Manager a written notice that the Work is ready for final inspection and acceptance and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager will evaluate the completion of Work of the Contractor and then forward the notice and Application, with the Construction Manager's recommendations, to the Architect who will promptly make such inspection. When the Architect, finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager such substantiation of the Contractor's right to payment as the Owner may require, such as and including: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Construction Manager and

Architect so confirm, the Owner shall, upon application by the Contractor and recommendation by the Construction Manager and Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect through the Construction Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims. Notwithstanding the foregoing, the Owner may at its option retain a minimum of three times the value of the incomplete or uncorrected parts of the Work, as estimated by the Construction Manager, provided the remaining work is minor and cannot be completed or corrected due to weather, unsuitable conditions for testing or other circumstances beyond the Contractor's control, as agreed upon by the Architect and Construction Manager.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors.

The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors;
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and
- .4 construction or operations by the Owner or other Contractors.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel and shall give the Owner reasonable written advance notice.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4

caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4, except damage or loss attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault, acts, operations, methods or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner, Construction Manager and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage to or any adjacent property or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to, asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner, Construction Manager and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resumed upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) arising out of such hazardous material, except to the extent that such damage, loss or expense is not due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

§ 10.5 MISCELLANEOUS GENERAL PROVISIONS

§ 10.5.1 The requirements under 10.4, Miscellaneous General Provisions, shall be considered as minimum requirements and shall not be construed to limit the amount of protection required to safeguard all persons and property, nor construed as directing or establishing the Contractor's methods or responsibilities.

§ 10.5.2 The Construction Manager shall provide and maintain adequate fire extinguishers in and around the construction area, available to all workers, but the Contractor shall not use extinguishers that are to be installed in the Work.

§ 10.5.3 The Contractor shall provide and maintain guard lights at barricades, railings, obstructions in streets, roads or sidewalks and at trenches or pits including at those adjacent to existing buildings, public roads, walks, and similar locations where a hazard may exist. The Contractor shall provide and maintain suitable barricades or fences around excavations, including trench excavations, excavated by Contractor or Subcontractors.

§ 10.5.4 As may be applicable to the Project and to the Work, the Contractor shall provide and be responsible for: protection of equipment, materials, supplies and Work to prevent any damage, including from freezing, thermal shock, heat, water, and other damaging elements; providing proper and adequate drainage (temporary and permanent) of the site in connection with work of this Contract; damage to property as a result of work or operations under this Contract, including but not restricted to damage from water, excavation, underpinning, removal or changing or structural supports; collapse or other failure to the Project resulting from the Contractor's acts, operations or work, including water undermining or creating pressure on the construction; pumping of water from work areas and excavations of this Contract, and spaces built, constructed or opened up under the Contract, and if necessary, installing temporary heat to keep the spaces dry; providing protection and planking on finished floors and other finished surfaces where work is being done by the Contractor or Subcontractors; closing and protecting all holes or openings through walls, floors and roofs that are cut or built by the Contractor or Subcontractors; and which will admit water to interior spaces during the construction period or will create a potential safety hazard; removal of snow to accomplish the Work; keeping premises in neat and orderly condition; eliminating fire hazards.

§ 10.5.5 As may be applicable to the Project and to its Work, the Contractor shall be responsible for the following: providing safe and adequate stairways (temporary and permanent) for the use of all trades; maintaining access to the site; proper protection by heating of an enclosed building during cold weather; protection for trees and other similar features, which are to remain, from damage from operations in connection with the Project, by boxing tree trunks and setting up barricades at sufficient distance to prevent damage to branches; the removal of accumulated snow and ice within a building, which generally shall be hauled out (not melted), unless it is a minor amount, as approved by Architect/Construction Manager.

§ 10.5.6 The Contractor and each of its Subcontractors shall provide storage and enclosures to protect and preserve the materials stored at and off the site. Materials such as wood, metal, cement, masonry materials, equipment of any type, conduit and similar materials, shall not be set directly on ground. Coverings shall be durable, watertight, fully cover sides as well as top, substantial and well anchored to prevent blowing away. Shed type enclosures shall be provided for easily damaged and small items. Any protection which becomes damaged shall be replaced immediately at the Contractor's sole cost and expense. Contractor's storage shall be reviewed and must be acceptable to the Construction Manager, as it relates to site coordination.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Liability Insurance

§ 11.1.1 The Contractor shall purchase and maintain commercial general liability insurance as required to protect the Contractor, Construction Manager, Architect and Owner from claims set forth below which may arise out of, result from, or are in any manner connected with, the execution of the Work provided for in this Contract, or occur or result from the use by Contractor, its agents or employees, of materials, equipment, instrumentalities or other property, whether the same be owned by the Construction Manager, Contractor and Owner or third parties, whether such claims arise during Contract performance or subsequent to completion of operations under this Contract and whether operations be by the Contractor or by anyone directly or indirectly employed by Contractor, or by anyone for whose acts Contractor may be liable, and whether such claims are claims for which the Contractor may be, or may be claimed to be, liable. Such insurance shall include, without limitation, coverage and endorsements as will insure the Contractor's obligations under the provisions of Subsection 3.18 herein. Insurance shall be purchased from a company licensed to do business in the state where the Project is located, and shall be written for not less than the limits of liability specified below or required by law, whichever is greater. The types of claims, required coverages and minimum limits of liability are as follows:

- A. Claims under Worker's Compensation, disability benefit and other similar employee benefit acts; claims for damages because of bodily injury, occupational sickness or disease or death of employees. Insurance coverages shall include:
Statutory Workers' Compensation, including Employer's Liability with a minimum limit of \$100,000.00 for each employee.
- B. Claims for damages because of bodily injury,
(Paragraphs deleted)
occupational sickness or disease, or death, by any person other than employees; claims for personal injuries which are sustained (1) by any person as a result of an act or omission directly or indirectly related to the employment of such person by the Contractor, or (2) any other person; claims for damages other than to the Work itself, because of injury to or destruction of tangible property including loss of use resulting therefrom. Insurance coverages shall include:
Premise-Operations
Products-Completed Operations
Blanket Contractual – Such insurance and endorsements as will insure the obligations under the provisions of Subsection 3.18 of this Document.
Broad Form Property Damage
Personal Injury
Blanket Explosion, Collapse and Underground Property Damage
Operations of Independent Contractors
Policy Limits: General Aggregate \$1,500,000.00
Products/Completed Operations Aggregate \$1,500,000.00
Personal Injury \$1,500,000.00
Each Occurrence \$1,500,000.00
- C. Claims for damages because of bodily injury or death of any person, or any property damage, arising out of the ownership or use of any motor vehicle. Insurance coverage shall include:
Business Auto Liability insurance including owned, hired and non-owned vehicles with limits of \$1,500,000.00
Combined Single Limit for each accident for bodily injury and death, or property damage.
- D. The coverage limits required by Paragraphs (B) and (C) above may be achieved by the use of an Umbrella Excess Liability Policy.
The limits of liability specified shall be considered minimum requirements.

All aforesaid insurance policies shall be underwritten with responsible insurance carriers, with Best's Ratings of not less than A and X and otherwise satisfactory to Construction Manager and Owner and licensed to provide insurance in the state in which the Project is located. Non-admitted carriers may be considered on an individual basis.

Approval of the insurance by the Construction Manager or Owner shall not relieve or decrease the liability of the Contractor. The Construction Manager, Architect and Owner do not in any way represent that the insurance or limits

of insurance specified above are sufficient or adequate to protect the Contractor's interests or liabilities, but are minimums.

The Contractor is responsible, at Contractor's expense and not a reimbursable expense, for providing any additional insurance Contractor deems necessary to protect Contractor's interest from other hazards or claims in excess of the aforementioned minimum insurance coverages.

The Construction Manager and Architect are intended third-party beneficiaries of the Contractor's obligations in this Section 11.1.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be submitted to the Construction Manager for transmittal to the Owner with a copy to the Architect prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled, materially changed or allowed to expire until at least 30 days' prior written notice has been given to the Construction Manager and Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause its Commercial General Liability Insurance, Automobile Liability Insurance and any Umbrella Liability Insurance, as described in Paragraphs B, C and D of Subsection 11.1.1, to be endorsed to name the Construction Manager, Architect and Owner as Additional Insureds, and such insurance shall be primary insurance without recourse to or contribution from any similar insurance carried by such named parties. The Additional Insured status must be reflected on the Contractor's Certificate of Insurance to Construction Manager and Owner. The Contractor shall provide Construction Manager with a copy of Contractor's Commercial General Liability Insurance policy or such Additional Insured endorsement to confirm Contractor's compliance with this Subsection.

§ 11.2 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 Property Insurance

(Paragraphs deleted)

§ 11.3.7 Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees each of the other, and (2) the Construction Manager, Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as the Owner and Contractor may have to the proceeds of such insurance held by the Owner as fiduciary.

The Owner or Contractor, as appropriate, shall require of the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, Owner's separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner and made payable to the Owner for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement.

§ 11.4 Performance Bond and Payment Bond

§ 11.4.1 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract (the "Bond").

§ 11.4.2 The Contractor shall provide as part of its bid, a valid and enforceable Bond which will run throughout the life of the Contract and its warranty periods. The Bond shall be issued by a corporate surety company authorized to do business in the state in which the Project is located and the surety company shall be subject to the Owner's approval. Fully executed copies of the Bond shall be provided to the Owner, Construction Manager and Architect.

§ 11.4.3 The minimum requirement for the Owner's approval of the Surety shall be that the Surety is listed by the United States Treasury Department as acceptable for bonding federal projects and that the bond amount is within the limit set by the Treasury Department as the net limit on any single risk. There shall be no affiliation between the Contractor and the Surety Company, Agent or Agency.

§ 11.4.4 For public work or other projects subject to statutory bond requirements, the bond form shall be the City of Duluth Performance Bond and Payment Bond included in the specifications, and shall comply with the statutory bond requirements of the state in which the Project is located.

§ 11.4.5 The Bond shall be in the amount of 100% of the full Contract Sum. When two part bonds are provided, the Bond shall be provided with 100% of the Contract Sum for the Performance Bond and 100% of the Contract Sum for the Payment Bond.

§ 11.4.6 The Bond shall guarantee the Contractor will perform each and every part of the Contract, cover all guarantees called for and insure prompt payment to all persons furnishing material or labor required in prosecution of the Work under the Contract. In the event of additions to the Contract, the Owner reserves the right to require evidence of additional bonding.

§ 11.4.7 The Bond shall provide: (1) for additions or deductions from the Work in any amount; (2) that completion time shall not be extended by reason of changes in the Work, unless agreed to at time of change; (3) that no notice of aforesaid alterations, additions, or omissions need to be given the Surety; and (4) permit occupancy by the Owner at any time.

§ 11.4.8 Final acceptance of the Work shall not relieve the Contractor nor Surety from their obligations under this Contract, including warranties of materials, equipment, installation or service.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Construction Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by either, be uncovered for their observation and be replaced at the Contractor's expense without change in the Contract Time. The Contractor shall give timely notice to the Architect, through the Construction Manager, of the readiness of the work to be observed.

§ 12.1.2 If a portion of the Work has been covered which the Construction Manager or Architect has not specifically requested to observe prior to its being covered, the Construction Manager or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or one of the other Contractors in which event the Owner shall be responsible for payment of such costs.

§ 12.2 Correction of Work

§ 12.2.1 Before or After Substantial Completion

The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed, unless the Owner elects to accept the Work as provided under Section 12.3. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. Work rejected before final completion shall be corrected prior to the processing of the final Contractor's Application and Certificate for Payment.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. The expiration of the above one year or any other specified time period, or any other period prescribed by law, shall not relieve the Contractor of the obligation for the expense to correct any latent defect in the Work or deficiencies which are not readily ascertained, including but not limited to defective materials and workmanship, defects attributable to material substitutions for specified materials, substandard performance or otherwise not in compliance with the Contract Documents. Such latent defects or deficiencies shall be corrected as provided in this Subsection 12.2. Following the correction or replacement of any of the Work, as above specified, the Contractor shall correct any defects or deficiencies in corrected or replaced materials and workmanship, which is found within one year after the date of correction or replacement.

§ 12.2.2.2 The one-year period shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors or other Multiple Prime Contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 For the purpose of the commencement of the specified periods covered by this Article 12, or any other special specified period, the date of the inspection for Substantial Completion of the last unit, part or phase of the Work shall be the starting date of the period, for all of the Work, except for any work noted as incomplete or unsatisfactory at that time. The period covered by this article for said incomplete or unsatisfactory work shall start on the date of specifically noted dates of inspection for Substantial Completion, (or of acceptance, in writing, by the Owner of corrected Work), the date of the Architect's issuance of the final Certificate and Application for Payment on the entire Contract will be the start of the period.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity or to an officer of the corporation for which it was intended; or if delivered at or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 Rights and Remedies

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Construction Manager, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 13.5 Tests and Inspections

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Construction Manager and Architect timely notice of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Construction Manager, Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Construction Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. Such costs except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Construction Manager's and Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Construction Manager for transmittal to the Architect.

§ 13.5.5 If the Construction Manager or Architect is to observe tests, inspections or approvals required by the Contract Documents, the Construction Manager or Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 Time Limits on Claims

The Owner and the Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Construction Manager has not certified or the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work executed including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, with the advice of the Architect and Construction Manager, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's Surety three (3) days' written notice, require the Surety to promptly take over and complete the Work under the terms of the Contract. Should the Surety fail to assume the obligations of completing the Work within three (3) days after receipt of the written notice, the Owner may, upon three (3) days' additional notice, terminate the employment of the Contractor (except the obligations of the Surety under the Bond) and may,:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may
- .Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work; and/or
- .2 Accept assignment of subcontracts pursuant to Section 5.4.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor and/or the Contractor's Surety shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the Owner completes the Work and the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including the Owner's additional costs, attorney's fees and compensation for the Construction Manager's and Architect's additional services, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages for the Owner to complete the Work exceeds such unpaid balance, the Contractor and/or its Surety shall pay the difference to the Owner. The amount to be paid to the Contractor or to the Owner, as the case may be, shall be certified by the Owner or Contractor and approved by the Initial Decision

Maker after consultation with the Construction Manager, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and the Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of this Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and for proven out-of-pocket loss with respect to materials, equipment, tools, and construction equipment and machinery incurred by reason of such termination, but excluding any fee or profit on any unperformed Work.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 **Notice of Claims.** Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Construction Manager and Architect, if the Construction Manager and or Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 **Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Construction Manager will prepare Change Orders and the Architect will issue a Certificate for Payment or Project Certificate for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 **Claims for Additional Cost.** If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.3.

§ 15.1.5 Claims for Additional Time

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.6 Claims for Consequential Damages. The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to litigation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect and Construction Manager, if the Architect or Construction Manager is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to litigation.

(Paragraphs deleted)

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Intentionally Deleted.

(Paragraphs deleted)

§ 15.4 Intentionally Deleted.

ARTICLE 16 ADDITIONAL CONDITIONS

§ 16.1 ADDITIONAL DEFINITIONS

(Paragraph deleted)

§ 16.1.1 Provide: As used in connection with labor, materials and equipment shall mean to furnish and install complete, including connections to utilities or service, complete anchorage and suspension, fastening or anchor devices, trim, finish and other related work, unless specified otherwise.

§ 16.1.2 Accepted, approved, satisfactory, equal to, proper, as directed and similar terms: These shall mean the decision rests with the Architect, whose decision shall be final and binding upon the Contractor and subcontractors.

(Paragraph deleted)

§ 16.1.3 Project, Work, Job: In the technical sections or on the drawings, these terms may be used interchangeably and are synonymous. They shall mean the facility, construction and/or improvement within the intent and scope of the Contract Documents. The terms shall mean the entire facility, or separable parts as appropriate to the use of the term, including that under subcontract where applicable, and includes labor, materials, equipment, services and skill.

§ 16.1.4 Notice to Proceed: This shall be written notice by the Construction Manager to the Contractor to commence Work of the Contract, issued after execution of the Contract. In issuing the Notice, stipulations may be included as to time and other requirements that may condition commencement of the Work.

(Paragraph deleted)

§ 16.2 USE OF DRAWINGS AND SPECIFICATIONS

(Paragraph deleted)

§ 16.2.1 During construction, the Contractor shall examine and use all Specifications and Drawings for the Project, including those that may primarily pertain to other work the Contractor normally does not perform with his own forces. The Contractor shall use all of the Project Drawings and Specifications: for a complete understanding of the Project and the Work; to determine the type of construction and systems; for coordination; to determine what other work may be involved in various parts or phases; to anticipate and notify others when work will be required; and all other relevant matters related to the Project. The Contractor shall also be bound by all the requirements to complete his Work, that are applicable to, pertain to, or affect the Work, as may be shown or inferred by the entire set of Drawings and Specifications.

(Paragraph deleted)

§ 16.3 PERIODIC PAYMENT ESTIMATE

§ 16.3.1 When required by the Owner to establish a schedule of money available to make payment of periodic Applications for Payment, the Contractor shall provide an estimate by months, of the anticipated amounts for each periodic payment. The retained percentage shall be considered in the estimate schedule, as well as anticipated job progress and materials delivery. The schedule will be deemed an estimate only, for financial planning purposes, and the Contractor shall not be bound to conform to the schedule. The schedule may be required by the Contract Documents or requested by the Owner after Contract execution.

(Paragraph deleted)

§ 16.4 LAYOUT OF THE WORK

(Paragraph deleted)

§ 16.4.1 Each Contractor shall employ a qualified engineer or registered surveyor to stake out and locate the construction, locate property markers and other points as needed to properly locate the Work under this Contract.

§ 16.4.2 The Contractor shall recognize that the drawings necessarily are diagrammatic, in many instances. All work and in particular, exposed piping, ducts, conduit and similar items shall be neatly and carefully laid out to provide the most useful space utilization and the most orderly appearance. Except as otherwise indicated or directed, piping and similar work shall be installed as close to ceilings and walls as conditions permit, located to prevent interference with other work or with the use of the spaces in the manner required by the functions of the room and the Owner. Valves shall be located in inconspicuous but accessible places. Before proceeding with any work, particularly where exposed, the Contractor shall carefully plan the layout and review it with the Architect and Construction Manager for acceptability of location.

§ 16.4.4 The Contractor shall verify grades, line levels and dimensions shown on drawings and report any errors or inconsistencies to Architect, through the Construction Manager for decision before commencing work. The Contractor and subcontractor shall be responsible for the correct location, dimensions and elevations of their Work. As the Work progresses, the Contractor shall be responsible for the layout of the exact location of all partitions and similar features, as guide to all trades.

§ 16.5 GENERAL QUALITY OF WORK, INSTALLATION AND OPERATION

§ 16.5.1 All of the Work shall be strictly first quality, in materials, erection, installation and workmanship.

§ 16.5.2 The Contractor shall request interpretations from the Architect, through the Construction Manager, for the following: Work indicated on the Drawings or specified in such a manner as to make it impossible to produce Work of the highest quality within the space shown; possibilities of damaging effects of expansion and contraction; discrepancies found between Drawings or between Drawings and Specifications. If the Contractor does not request such interpretation, no excuse will be entertained thereafter for failure to carry out and guarantee the Work in a satisfactory manner. Elements of the Work intended to protect against the weather shall be guaranteed weatherproof and watertight.

§ 16.5.3 Proper performance of the Contract shall imply correct and proper placement, proper or published results for products and equipment, fitting and operation of fixed or movable and operating parts of the Work, including doors, windows, hardware and all systems and equipment. Materials and equipment shall be completed in every respect, with parts, connections, anchors, devices, backing, fittings and other necessary items, and shall be completely installed, anchored, fitted and placed in operating condition. Before buying, constructing or installing work, the Contractor shall notify the Architect of conditions which exist in the Contract Documents which will adversely affect proper operation of first quality installation.

§ 16.5.4 Throughout the Project, accommodate various materials and pieces of equipment that are fitted to other materials and equipment and various materials that are applied to which other materials attach. Take all reasonable precautions to insure materials, devices, items, equipment or other products can be satisfactorily applied or installed to each other or work of others and make necessary adjustments during preparation of shop drawings or in advance of field or shop work to accommodate other work.

§ 16.5.5 Materials or equipment shall be installed or applied according to directions of the manufacturer or recommendations of an association dealing primarily with materials, unless specifically designated otherwise. In no case shall installation, including any temporary work necessary (e.g., shoring), be below standard recommended by manufacturer. Where specified requirements exceed the manufacturer's standards, the specification shall govern. Fabrication (including reinforcing and accessories) and installation shall be provided to insure proper placement and use of the item or material under the location, use, condition, and available space to serve intended function and to meet code requirements. Equipment and devices shall be provided and installed to "fail safe" under normal operating conditions and it shall be Contractor's obligation to provide and install work in such manner.

§ 16.6 GENERAL FIRE SAFETY

§ 16.6.1 The Contractor shall exercise extreme care to maintain the exercise adequate fire safety precautions throughout construction. This shall include providing sufficient devices, watchmen, standby helpers or other precautions during construction, in use of temporary heat, welding, brazing, sweating, testing or other phases of work.

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Welding, brazing, cutting and sweating operations performed in vicinity of, or accessible to, combustible materials shall be adequately protected to make certain that sparks or hot slag do not reach the combustible materials and start a fire. Glass and glazed material shall be masked from splatter. When necessary to do cutting, welding, brazing, sweating, in vicinity of wood, or combustible material (and the combustible material cannot be removed), the materials shall be adequately protected with fireproof coverings. In addition, a helper shall be stationed nearby with property fire extinguishers to guard against sparks and fire.

§ 16.6.2 Whenever combustible materials have been exposed to sparks, molten metal, hot slag, or splatter, a watchman shall be kept at the place of work for at least two hours after completion to make sure that smoldering fires have not been started. Whenever cutting or welding operations are carried on in a vertical pipe shaft, a watchman to act as a fire guard shall be employed to examine floors below the point of cutting or welding. This fire guard shall be kept on duty at least two hours after completion of the work to guard against fires and he shall examine each level after this time, prior to leaving.

§ 16.7 RESPONSIBLE CONTRACTOR

§ 16.7.1 To the extent applicable, and to the full extent required by law, the Contractor (i) acknowledges that all provisions of Minn. Stat. § 16C.285 shall be fully incorporated herein by reference and made applicable to the Contract and (ii) shall comply with all provisions of Minn. Stat. § 16C.285, including, without limitation, verifying under oath to Owner the Contractor's compliance and providing and updating a list of the Contractor's first-tier subcontractors retained to provide any work on the Project. The Contractor is responsible to ensure compliance with the terms of Minn. Stat. § 16C.285 by all of its subcontractors. The Contractor shall indemnify the Owner and Construction Manager for all costs, expenses and damages (including reasonable attorney's fees) incurred by the Owner or Construction Manager as a result of the Contractor's failure to comply with the terms of this Section. The Contractor's failure to comply with this Section shall constitute a material breach of the Contract. All references to Minn. Stat. § 16C.285 in this Section shall mean the current version of such § 16C.285 applicable on the date of the Contract, including any replacement statute thereof.

§ 16.8 EXAMINATION OF BOOKS AND RECORDS

§ 16.8.1 The books, records, documents and accounting procedures and practices of the Contractor as they relate to this Contract are subject to examination of the Owner, and either the Legislative Auditor or the State Auditor, as appropriate, for a period of six (6) years following termination or expiration of this Contract.

Additions and Deletions Report for AIA[®] Document A232[™] – 2009

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Gary New Duluth Community Center

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§ 1.1.1 The Contract Documents. The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement), and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, Performance Bond or Performance-Labor Material Bond, if required, Contractor's Bid, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, ~~the Contractor's bid or proposal,~~ or portions of addenda relating to bidding requirements).

...

§ 1.1.3 The Work. The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. To the extent the Contractor has entered into an A132-2009 Materials Contract with the Owner for the Project (the "Materials Contract"), the Work under the Materials Contract means the purchase by the Contractor, acting as Purchasing Agent for the Owner, of the materials, supplies or equipment (collectively the "Tax Exempt Materials") for the Project, exempt from sales tax, and specifically excludes any taxable materials to be incorporated into the Project. To the extent the Contractor has entered into an A132-2009 Labor and Taxable Material Contract for the Project (the "Labor Contract"), the Work under the Labor Contract does not include any Tax Exempt Materials.

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§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the ~~Contractor.~~ Contractor, in proper operating condition. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any ~~trade-trade,~~ unless it is specified that a subcontract include specific phases or elements to complete a certain part of the Work for reasons of coordination or responsibility. Where the Specification has been divided into sections, it is for convenience in use. The Architect assumes no responsibility for proper placement of phases of the Work into the proper division or section nor the arrangement of Work shown on the Drawings. The Architect shall not be obligated to enter into jurisdictional or other disputes as a result of the organization, arrangement or location of

parts of the Work in Specifications or on Drawings, nor to serve as arbiter to establish subcontract limits. Unless otherwise specified, the scope of work of each section shall be to furnish labor, materials, equipment, skill, erection, installation, services and related items for the phase of work of that section, as required by the Drawings, as specified or as otherwise required to provide and complete the entire work of the section.

...

§ 1.2.4 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.5 The general character and scope of the Work is called for by the Contract Documents. Where a portion of the Work is fully drawn and the remainder is merely indicated, the portion fully drawn shall apply to all similar parts of the Work. Drawings intended primarily as information for one trade may not necessarily show the work of other trades, which shall not be construed as there being no related materials or adjacent work.

§ 1.2.6 Figured dimensions shall be followed in preference to measurement by scale. In the event of discrepancies between Drawings, between Drawings and Specifications or between Specifications, the intent shall be interpreted by the Architect, which shall be binding on the Contractor. Where a dimension may be missing, the Work shall be accomplished in accordance with the directions and dimensions provided by the Architect. Dimensions on Drawings, as well as detail Drawings themselves, are subject in every case to measurements of existing, adjacent, incorporated and completed work which shall be taken by the Contractor before undertaking any work dependent upon such data. Dimensions pertaining to the Work shall be verified at site by Contractor.

§ 1.2.7 Where Specifications are of the abbreviated or "streamlined" type, they shall be construed as complete sentences, as shall notes on the drawings. Omission of Words such as "the", "the Contractor shall", and "as shown on the drawings" is intentional. The words "shall" or "shall be" are to be supplied by inference. Imperative or directive instruction, directions or specifications apply and refer to the Contractor. The words "symmetrical" and "similar" are used in the general sense and need not mean "identical".

§ 1.2.8 Where a number is specified (as for gauges, weights, temperatures, an amount of time, and similar references) and the specified number cannot be obtained, the number shall be interpreted as the next better, as available.

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§ 2.2.3 The Except as otherwise required by the Contract Documents, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten day~~ seven-day period after receipt of written notice from the Owner to the Contractor and its surety, if any, to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such ~~deficiencies~~ deficiencies or require the Contractor's surety to assume the obligations of the Contractor. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor or its surety the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants' additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior ~~approval~~ concurrence of the Architect, after consultation with the Construction Manager. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor or its surety shall pay the difference to the Owner.

...

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. The Contractor also represents that all Contract Documents for the Project have been examined, including those intended for work of trades not normally performed by the Contractor's own forces, and the Contractor has become thoroughly familiar with all conditions which may pertain to or affect the Work under this Contract.

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§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Owner shall take title to all Tax Exempt Materials at the point of delivery and the Owner retains the risk of loss for all Tax Exempt Materials.

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§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. All work shall be performed in the best and most workmanlike manner to the highest standards for the work. Incompetent or careless workmanship shall not be permitted by the Contractor and will not be accepted.

§ 3.4.4 The Contractor, and all those working under its jurisdiction, shall conform to labor laws of the state and all other laws, ordinances and legal requirements affecting the Work. Prior to starting work, the Contractor shall become familiar with local labor and trade conditions, skilled and unskilled, and shall conform to local conditions. The Contractor shall consider the availability of labor in the area and import labor as may be required to meet the schedule for the Work.

Unless otherwise provided in Contract Documents, all materials, equipment and other products shall be one of the brands, manufacturers or types specified. All like products for the Work shall be by the same manufacturer.

§ 3.4.5 After the Contract has been executed, the Owner and the Architect, after consultation with the Construction Manager, will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in the Contract Documents.

§ 3.4.6 By making requests for substitutions based on the preceding subsection, the Contractor:

- .1 Represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- .2 Represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;
- .3 Certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- .4 Will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

...

The Contractor warrants to the Owner, Construction Manager, and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform with the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. ~~The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage.~~ Owner has the responsibility for all defective Tax Exempt Materials. If required by the Construction Manager or

Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The quality required under this Warranty shall, as a minimum, equal all standards or requirements of form, function, durability, performance, type, strength, efficiency, service, appearance or other criteria established by the requirements of the Contract Documents.

...

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Owner, through the Construction Manager, shall secure and pay for the building permit. The Contractor shall secure and pay for other permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall provide and pay for all bonds that may be required to accomplish the Work, including any bonds required by municipalities.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. In any instance where requirements of the Contract Documents are in excess of, but not in conflict with or violation of requirements of a public authority, the provisions of the Contract Documents shall govern.

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§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than 21-7 days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect, in consultation with the Construction Manager, determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, Construction Manager, and Contractor in writing, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may proceed as provided in Article 15.

...

- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the ~~allowances~~; allowances, except where installation is specified as part of the allowance in the Contract Documents; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.
- .4 The supplier or subcontractor for an allowance item is subject to acceptance of the Owner, Architect, and Construction Manager; and the Contractor's Purchase Order or Subcontract Agreement shall bind the supplier or subcontractor to the requirements of the Contract Documents.

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The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of ~~approved~~ accepted Shop Drawings, Product Data, Samples and similar required submittals. The record documents shall be a separate set of documents used only for record purposes and kept clean and undamaged. These documents shall be available to the Architect and delivered to the Construction Manager for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been reviewed and ~~approved~~-accepted by the Architect.

§ 3.12.8 The Work shall be in accordance with ~~approved~~-accepted submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Construction Manager and Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.13.3 The Contractor shall return all improvements on or about the site, streets and adjacent property which are not shown to be altered, removed or otherwise changed, to the conditions which existed previously. The Contractor shall protect existing structures or other features from damage by any operation in connection with the Contract.

§ 3.13.4 Utilities or other services which are shown, or not shown but encountered or otherwise found, shall be protected by the Contractor from any damage from excavation or other work and operations of this Contract, unless or until they are abandoned. Contractor shall immediately restore any damage from its work or operations to place the utilities and services in good operating condition. If the utilities or services are shown to be abandoned or moved, they shall remain in service, and be protected by the Contractor, until new utilities and services have been provided, tested and ready for use.

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents. Cutting and patching shall be kept to an absolute minimum by careful planning and through providing proper holes, sleeves, anchors, inserts or other built-ins as Work progresses and then only to the extent required to properly place, support, hang, anchor or install Work. Contractor shall restore the improvements and finishes to like-new condition, to match adjoining work and such restoration shall be performed by workers skilled in the particular type of work involved. Where finishes are patched, they shall be patched to the extent necessary to provide unbroken and unattached appearance and shall be carried to natural break points as necessary. All patching is subject to the Architect's acceptance. Unauthorized or careless cutting will not be permitted. No structural member shall be cut in a manner or to an extent which will affect the structural effectiveness, unless approved by the Architect.

...

§ 3.14.3 Cutting and patching of construction work or excavation and backfilling in or about the building, shall be done under the general supervision of the Contractor for that phase of the Work being altered, who shall be responsible to see that patching and backfilling is accomplished by using proper labor, materials and methods consistent with the requirements for other similar construction.

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall ~~indemnify~~-indemnify, defend and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, whether before or after substantial completion of the Project, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) but only to the extent caused by the

negligent or wrongful acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. The Contractor's obligations under this Section 3.18 shall survive the completion of the Project and any termination of this Agreement.

...

§ 3.19 EQUAL OPPORTUNITY IN EMPLOYMENT

§ 3.19.1 Contractor shall not discriminate against any employee or applicant for employment because of sex, creed, color, religion, national origin, marital status, status with respect to public assistance, disability, age, or sexual preference. Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to the following: employment, upgrading, demotion or transfer, recruitment, recruitment advertising, layoff or termination, rates of pay or other form of compensation and selection for training, including apprenticeship. Contractor shall incorporate these same equal opportunity, antidiscrimination and affirmative action requirements into all agreements between Contractor and its Subcontractors.

§ 3.20 VERIFICATION OF FIELD CONDITIONS

§ 3.20.1 The Contractor shall take field measurements and verify field conditions with the Contract Documents and final Shop Drawings before commencing any Work. The Contractor shall promptly report errors, inconsistencies or omissions to the Architect and Construction Manager.

§ 3.20.2 No change in the Contract Sum will be allowed on account of minor differences between actual field conditions and the Contract Documents.

§ 3.21 MISCELLANEOUS CONTRACTOR RESPONSIBILITIES

§ 3.21.1 The Contractor agrees to adequately and properly protect its Work. The Contractor agrees to adhere to the Federal Occupational Safety & Health Act, state and local safety regulations, so as to avoid injury or damage to persons or property resulting from failure to do so.

§ 3.21.2 In the event the Contractor, after 24 hour written notice from the Construction Manager fails to take corrective action to ensure compliance with said safety regulations, the Construction Manager may, but shall not be obligated to, remedy the situation according to OSHA standards and charge the cost of same to the Contractor's account without further notice to the Contractor.

§ 3.21.3 The Contractor agrees to notify the Construction Manager's representative on the job site of all accidents which may occur to persons or property and shall provide the Construction Manager's representative with a copy of all accident reports on appropriate forms. All reports shall be signed by the Contractor or his authorized representative and submitted within twenty-four (24) hours of occurrence.

§ 3.21.4 The Contractor agrees that all disputes concerning the jurisdiction of trades shall be adjusted in accordance with any plan for the settlement of jurisdictional disputes which may be in effect either nationally or in the locality in which the work is being done. The Contractor shall be bound by, and shall abide by, all such adjustments and settlements of jurisdictional disputes, whether or not the Contractor is signature bound by the agreement establishing the Impartial Jurisdictional Disputes Board and/or its successors. The Contractor agrees not to cause a work stoppage due to the jurisdictional assignment of Work.

§ 3.21.5 The Contractor shall submit to the Construction Manager upon request, copies of orders placed for the various materials required for the Work or stock lists if such material is normally a stock item. Order copies need not reflect prices but should indicate, among other things, type of material, quantity, and vendor name, and address. The Contractor shall be required to submit to the Construction Manager a monthly Material Status report, or more often if required by the Construction Manager, as a prerequisite for the monthly progress payment. The Contractor shall notify the Construction Manager immediately upon learning of a change of status of any material, equipment or supplies.

§ 3.21.6 The Contractor agrees to maintain an adequate force of experienced workers and the necessary materials, supplies, and equipment to meet the requirements of the Construction Manager and other trades in order to maintain construction progress schedules, as established by the Construction Manager and Owner. In the event that Contractor's forces are, in the judgment of the Construction Manager, inadequate to meet the established schedules during the regular working hours, the Contractor agrees to work sufficient overtime hours or increase its work force to meet such schedules at no extra cost to the Construction Manager, Architect, or the Owner.

§ 3.21.7 The Contractor agrees to employ competent administrative, supervisory, and field personnel to accomplish the Work, including layout, engineering, preparation and checking of shop drawings. Such supervisory personnel shall not be changed without written consent of the Construction Manager.

§ 3.21.8 The Contractor shall insure that all construction tools, equipment, temporary facilities, and other items used in accomplishing the Work, whether purchased, rented or otherwise provided by the Contractor or provided by the others, are in a safe, sound, and good condition; capable of performing the function for which they are intended and maintained in conformance with applicable laws and regulations.

§ 3.21.9 In no event shall any act or omission on the part of the Owner, the Architect or the Construction Manager relieve the Contractor from its obligation to perform its Work in full compliance with the Contract.

§ 3.21.10 The Contractor shall be responsible to the Owner and Construction Manager for the acts and omissions of all of its employees and all of its subcontractors, their agents and employees, and all other persons performing any of the Contractor's Work.

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§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is Architect is _____, referred to throughout the Contract Documents as if singular in number. The term Architect means the Architect or his authorized representative, including employees or consultants. Where "Architect" may be used relating to engineering phases of the Work, substitute the term "Engineer" therefor.

§ 4.1.2 The Owner shall retain a construction manager lawfully licensed to practice construction management or an entity lawfully practicing construction management in the jurisdiction where the Project is located. That person or entity is identified as the Construction Manager in the Agreement and is Construction Manager is Kraus-Anderson® Construction Company referred to throughout the Contract Documents as if singular in number. The term "Construction Manager" means the Construction Manager or the Construction Manager's authorized representative, including employees or consultants.

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§ 4.2.9 The Construction Manager will receive and promptly review for general conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data and Samples. Where there are Multiple Prime Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from Contractor and other Multiple Prime Contractors, and transmit to the Architect those recommended for approval-acceptance. By submitting Shop Drawings, Product Data, Samples and similar submittals, the Construction Manager represents to the Owner and Architect that the Construction Manager has reviewed and recommended them for approval. The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect.

§ 4.2.10 The Architect will review and approve-accept or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's

professional judgment to permit adequate review. Upon the Architect's completed review, the Architect shall transmit its submittal review to the Construction Manager.

...

§ 4.2.13 The Construction Manager and the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7.7, and the Architect will have authority to order minor changes in the Work as provided in Section 7.4. The Architect, in consultation with the Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

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§ 5.1.1 A Subcontractor is a ~~person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.~~ person, firm or entity having a direct contract or purchase order with the Contractor to provide or furnish materials, equipment, facilities, labor or services, or a combination of these, for the execution and completion of the Work or part thereof. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include other Multiple Prime Contractors or subcontractors of other Multiple Prime Contractors.

§ 5.1.2 A Sub-subcontractor is a person or entity ~~who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site.~~ having a direct or indirect contract or purchase order with a Subcontractor to provide or furnish materials, equipment, facilities, labor or services, or a combination of these, for the execution and completion of the Work or part thereof. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

...

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Construction Manager for review by the Owner, Construction Manager and Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the ~~Work.~~ Work, along with a list of the actual materials or equipment such person will be furnishing. The Construction Manager may reply within 14 days to the Contractor in writing stating (1) whether the Owner, the Construction Manager or the Architect has reasonable objection to any such proposed person or entity or, (2) that the Construction Manager, Architect or Owner requires additional time for review. Failure of the Construction Manager, Owner, or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

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§ 5.2.3 If the Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. No increase in the Contract Sum shall be allowed should a substitution be required as a result of the Owner's or Architect's reasonable objection based on specified criteria on which a proposed subcontractor will be evaluated.

...

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor Contractor or other entity. ~~If the Owner assigns the subcontract to a successor Contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor Contractor's obligations under the subcontract.~~

§ 6.2.1 The Contractor and Subcontractors shall cooperate with and coordinate their work with all other Contractors and the Owner to facilitate the general progress of the Project and to prevent delaying the progress of other Contractors. The Contractor shall afford the Owner's own forces, Construction Manager and other Multiple Prime Contractors reasonable opportunity for the introduction and storage of their materials and equipment and performance the execution of their activities, Work, and shall connect and coordinate the Contractor's construction and operations Contractor's Work with theirs as required by the Contract Documents. Each Contractor and Subcontractor shall obtain layout drawings, roughing-in detail sheets and other pertinent information directly from each other (not from Architect or Construction Manager) to coordinate all phases of the Work. For coordination with the Owner's equipment or materials, information shall be obtained from the Owner through the Construction Manager. After timely notification by the Contractor of the need to accomplish a particular phase or element of the Work, the other Contractors shall, within a reasonable time, perform their Work so as not to delay or impede the Contractor.

...

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs, including costs that are payable to a separate contractor or to other Multiple Prime Contractors because of the Contractor's delays, improperly timed activities-activities, lack of coordination with other Contractors or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of delays, improperly timed activities, damage to the Work or defective construction by the Owner's own forces or other Multiple Prime Contractors.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner, separate contractors, or other Multiple Prime Contractors as provided in Section 10.2.5.

§ 7.1.4 For proposed changes in the Work the costs shall be determined as provided under this Subsection 7.1.4. The Contractor shall submit an itemized list of quantities with the applicable unit costs and extended price for each, in such form and detail as required by the Construction Manager/Architect.

- .1 As a minimum, the detailed breakdown shall include and indicate the items enumerated below. Items (a) and (b) constitute the cost of labor, and items (a), (b), (c) and (d) constitute the basic costs referred to under this Article 7.
 - (a) Labor costs, itemized by each trade involved, showing the hourly rates for each, and the hours required for the change. Labor rates shall be the same for extra and credit computations and shall be the actual rate paid workmen in accordance with established management labor agreement.
 - (b) Burden on labor, which shall be only the actual costs of mandatory fringe benefits required by established agreements, taxes on labor, worker's or workmen's compensation, insurance on labor as affected by payroll, unemployment taxes and insurance, including FICA and FUTA.
 - (c) Quantities of materials, equipment and supplies, at their actual cost, with unit costs indicated.
 - (d) The cost of subcontracted work, computed in the same way as provided for under this Subsection 7.1.4.
 - (e) Overhead, profit or commission.
 - (f) Applicable sales tax on materials, added after the above computations are complete.
- .2 The maximum that will be allowed for overhead and profit, or commission, shall be as follows, expressed as a percentage of the basic cost of the change. The maximum allowable percentages for profit, overhead and commission may be less, depending on the nature, extent or complexity of the change, where the percentage is not commensurate with the responsibility and administration involved (such as the Contractor merely processing a substantial Change Order to a Subcontractor) but in no event shall they exceed the following:

	Overhead/Profit	Commission
<u>(a) To the Contractor and/or Subcontractor</u>	<u>10%</u>	
<u>for work performed with their own forces.</u>		
<u>(b) To the Contractor for work performed by</u>		
<u>other than its own forces.</u>	<u>--</u>	<u>5%</u>

- .3 Not more than two percentages for overhead, profit and commission will be allowed. The mark-up on any part of the Work a Subcontractor subcontracts will be limited to one overhead/profit figure in addition to the Contractor's commission, the Subcontractor and Sub-Subcontractor may divide the overhead and profit amount as they agree upon.
- .4 The burden on labor may be indicated as a dollar/cents addition to the hourly rate or may be expressed as a percentage of the extended hourly rate costs. If required by the Owner, Construction Manager or the Architect, the Contractor shall provide a detailed breakdown to justify the labor burden. The Construction Manager reserves the right to reject any labor burden which is inconsistent with other similar contractors or where the cost of fringe benefits are in excess of established labor agreements. The burden on labor shall not include any costs noted as general overhead.
- .5 Material, equipment and supply costs shall be quoted at the actual cost to the Contractor, or Subcontractor. Upon request, the Contractor (or Subcontractor) shall submit evidence to substantiate the costs. Said costs shall be quoted at trade discount prices, with quantity discounts also applied where the quantities warrant. Cash or prompt payment discounts need not be credited. In any proposal with material, equipment and supply credits, the credit shall be based on the actual Contract cost of the material (including trade and quantity discounts) less any charges actually incurred for handling or returning a material which has been delivered. No cancellation, restocking or similar charge will be allowed unless actually incurred by the purchaser and generally will not be allowed when the product has not been shipped.
- .6 The percentages allowed for overhead, profit or commission under clause 7.1.4.2 shall be deemed to include, and no further addition allowed for: (1) field and office supervision and administration, including the field superintendent and foremen; (2) general insurance, except that listed as the labor burden; (3) use or replacement of tools; (4) shop burden; (5) equipment rental (other than specifically required additional hoisting equipment, required excavating equipment or similar equipment necessary solely as a result of the change); (6) engineering and estimating costs; (7) performance and payment (guaranty) bond; (8) cost of safety measures (including those imposed by OSHA); (9) shipping, drayage and demurrage; (10) parking charges; (11) clean up and debris removal; (12) testing; (13) permits, unless a new permit type is required; (14) or any other costs except those enumerated under clause 7.1.4.
- .7 Cost changes shall be computed by determining the basic costs enumerated under clause 7.1.4 (as further specified under this subsection), to which the overhead may be added, then the profit figure may be added and finally adding the sales tax on materials.
- .8 Subcontractors (or Sub-Subcontractors) shall compute their costs in the same way and are subject to the same conditions of what may be included in the cost and the same maximum percentages for overhead and profit. To the Subcontractor's price, the Contractor may add up to 5% commission.
- .9 For changes involving work of the Contractor with its own forces and work by a Subcontractor (or Sub-Subcontractor), the commission shall be applied directly to the Subcontractor's price, with the overhead and profit figure applied only to the Work the Contractor performs with its own forces.
- .10 For changes involving both extra and credit amounts, the overhead and profit, or commission, shall be applied only to net difference where the extra exceeds the credit.
- .11 For changes resulting in a credit in the basic costs, a reasonable allowance for overhead, profit or commission may be required to be credited the Owner, as approved by the Architect after consultation with the Construction Manager. In general, no credit for overhead, profit or commission will be required where the net change credit is minor or where the change in Work indicates it is reasonable that no credit be allowed to the Owner due to the effort, cost or responsibility of the Contractor. In the event of substantial subcontract credits, or for Work not performed by the Contractor, a reasonable overhead, profit or commission credit shall be allowed to the Owner.

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The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order issued through the Construction Manager and shall be binding on the Owner and Contractor. The Architect shall also have the right to make minor changes in dimensions, locations, arrangements or details to accommodate changes in other materials and equipment, improve the Work, or prevent unforeseen interference with structural or other features. Such changes shall be made without a change in the Contract Sum.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve ~~Substantial Completion within the Contract Time.~~Final Completion within the Contract Time. The Work shall not be suspended or shut down, but shall progress continuously with sufficient labor at all times, unless otherwise approved by the Owner, Architect and Construction Manager.

...

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner, Owner's own forces, Construction Manager, Architect, any of the other Multiple Prime Contractors or an employee of any of them, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending ~~mediation and arbitration,~~resolution of a dispute, or by other causes that the Architect, based on the recommendation of the Construction Manager, determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

...

§ 8.3.3 This Section 8.3 does not preclude the Owner's recovery of damages for delay by either party under other provisions of the Contract Documents. ~~The Contractor's sole and exclusive remedy for delay is a right to a time extension for completion of the Contract and not damages.~~

...

Where the Contract is based on a Stipulated Sum or Guaranteed Maximum Price, the Contractor shall submit to the Construction Manager, before the first Application for ~~Payment,~~Payment and in accordance with other requirements of the Contract Documents, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager and Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. In the event there is one Contractor, the Construction Manager shall forward to the Architect the Contractor's schedule of values. If there are Multiple Prime Contractors responsible for performing different portions of the Project, the Construction Manager shall forward the Multiple Prime Contractors' schedules of values only if requested by the Architect.

§ 9.3.4 The Contractor shall submit its Application for Payment on forms as the Construction Manager or Architect may specify or direct. The Application shall be accompanied by a sworn, notarized Certificate by the Contractor, attesting to the accuracy of the amount as being for work satisfactorily complete in accordance with the Contract Documents, and that all just claims and bills for labor, materials, equipment, subcontracts and services or other expenses represented in previous Applications for Payment have been paid, such that the Contractor is entitled to the payment.

§ 9.3.5 PROMPT PAYMENT TO SUBCONTRACTORS In accordance with Minnesota law, the Contractor shall include, in all subcontracts and other agreements with its subcontractors and suppliers, a provision which requires the Contractor to pay any of its subcontractors and suppliers within 10 days of the Contractor's receipt of payment from the Owner, for undisputed services or supplies provided by the subcontractor or supplier. The provision shall also include the requirement that the Contractor shall pay interest of one and one-half percent (1.5%) per month or any part of a month to the subcontractor or supplier on any undisputed amount not paid on time to the subcontractor or supplier. The provision shall further provide that the minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10; for an unpaid balance of less than \$100, the Contractor shall pay the actual penalty due to the subcontractor or supplier; and a subcontractor or supplier who prevails in a civil action to collect interest penalties from the Contractor shall be awarded its costs and disbursements, including attorneys' fees, incurred in bringing the action.

§ 9.5.1 The Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.4 and 9.4.5 cannot be made. If the Construction Manager or Architect is unable to ~~certify payment~~ issue a Certificate for Payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.3. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the acts and omissions described in Section 3.3.2 because of

§ 9.6.6 ~~A~~ Issuance of a Contractor's Application and Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute an acceptance of any Work not in accordance with the Contract Documents. The Contractor and its Surety agree any issuance of a Contractor's Application and Certificate for Payment by the Architect, payment on the Contract Sum or in reducing any retaining amount, or any use or occupancy of the Work will in no way relieve them of the obligation to completely fulfill or accomplish all obligations of the Contract, including warranty of the Work, and that they waive any actual or alleged rights of subrogation or action against the Owner or the Architect as a result of any such issuance of a Contractor's Application and Certificate for Payment, payment, or use or occupancy. At any time, the Surety shall have the right to examine the status of the Work, as well as any payments, and may request the Owner to withhold additional sums as it considers appropriate to protect its interests.

If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Construction Manager and ~~Architect or awarded by binding dispute resolution~~, then the Contractor may, upon seven additional days' written notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8.6 After Substantial Completion, the Contractor shall coordinate his activities with the Owner's use of the substantially completed work and shall diligently complete the remaining work, without delay or interruption, within the remaining Contract Time.

...

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager such substantiation of the Contractor's right to payment as the Owner may require, such as and including: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written

statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Construction Manager and Architect so confirm, the Owner shall, upon application by the Contractor and ~~certification~~ recommendation by the Construction Manager and Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect through the Construction Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims. Notwithstanding the foregoing, the Owner may at its option retain a minimum of three times the value of the incomplete or uncorrected parts of the Work, as estimated by the Construction Manager, provided the remaining work is minor and cannot be completed or corrected due to weather, unsuitable conditions for testing or other circumstances beyond the Contractor's control, as agreed upon by the Architect and Construction Manager.

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§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified ~~personnel~~ personnel and shall give the Owner reasonable written advance notice.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4, except damage or loss attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the ~~fault~~ fault, acts, operations, methods or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage it or any adjacent property or create an unsafe condition.

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§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall ~~resume~~ resume-resumed upon written agreement of the

Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work ~~itself~~, ~~itself~~) arising out of such hazardous material, except to the extent that such damage, loss or expense is not due to the fault or negligence of the party seeking indemnity.

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§ 10.5 MISCELLANEOUS GENERAL PROVISIONS

§ 10.5.1 The requirements under 10.4, Miscellaneous General Provisions, shall be considered as minimum requirements and shall not be construed to limit the amount of protection required to safeguard all persons and property, nor construed as directing or establishing the Contractor's methods or responsibilities.

§ 10.5.2 The Construction Manager shall provide and maintain adequate fire extinguishers in and around the construction area, available to all workers, but the Contractor shall not use extinguishers that are to be installed in the Work.

§ 10.5.3 The Contractor shall provide and maintain guard lights at barricades, railings, obstructions in streets, roads or sidewalks and at trenches or pits including at those adjacent to existing buildings, public roads, walks, and similar locations where a hazard may exist. The Contractor shall provide and maintain suitable barricades or fences around excavations, including trench excavations, excavated by Contractor or Subcontractors.

§ 10.5.4 As may be applicable to the Project and to the Work, the Contractor shall provide and be responsible for: protection of equipment, materials, supplies and Work to prevent any damage, including from freezing, thermal shock, heat, water, and other damaging elements; providing proper and adequate drainage (temporary and permanent) of the site in connection with work of this Contract; damage to property as a result of work or operations under this Contract, including but not restricted to damage from water, excavation, underpinning, removal or changing or structural supports; collapse or other failure to the Project resulting from the Contractor's acts, operations or work, including water undermining or creating pressure on the construction; pumping of water from work areas and excavations of this Contract, and spaces built, constructed or opened up under the Contract, and if necessary, installing temporary heat to keep the spaces dry; providing protection and planking on finished floors and other finished surfaces where work is being done by the Contractor or Subcontractors; closing and protecting all holes or openings through walls, floors and roofs that are cut or built by the Contractor or Subcontractors; and which will admit water to interior spaces during the construction period or will create a potential safety hazard; removal of snow to accomplish the Work; keeping premises in neat and orderly condition; eliminating fire hazards.

§ 10.5.5 As may be applicable to the Project and to its Work, the Contractor shall be responsible for the following: providing safe and adequate stairways (temporary and permanent) for the use of all trades; maintaining access to the site; proper protection by heating of an enclosed building during cold weather; protection for trees and other similar features, which are to remain, from damage from operations in connection with the Project, by boxing tree trunks and setting up barricades at sufficient distance to prevent damage to branches; the removal of accumulated snow and ice within a building, which generally shall be hauled out (not melted), unless it is a minor amount, as approved by Architect/Construction Manager.

§ 10.5.6 The Contractor and each of its Subcontractors shall provide storage and enclosures to protect and preserve the materials stored at and off the site. Materials such as wood, metal, cement, masonry materials, equipment of any type, conduit and similar materials, shall not be set directly on ground. Coverings shall be durable, watertight, fully cover sides as well as top, substantial and well anchored to prevent blowing away. Shed type enclosures shall be provided for easily damaged and small items. Any protection which becomes damaged shall be replaced immediately at the Contractor's sole cost and expense. Contractor's storage shall be reviewed and must be acceptable to the Construction Manager, as it relates to site coordination.

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor and maintain commercial general liability insurance as required to protect the Contractor, Construction Manager, Architect and Owner from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor of, result from, or are in any manner connected with, the execution of the Work provided for in this Contract, or occur or result from the use by Contractor, its agents or employees, of materials, equipment, instrumentalities or other property, whether the same be owned by the Construction Manager, Contractor and Owner or third parties, whether such claims arise during Contract performance or subsequent to completion of operations under this Contract and whether operations be by the Contractor or by anyone directly or indirectly employed by any of them, by Contractor, or by anyone for whose acts any of them may be liable; Contractor may be liable, and whether such claims are claims for which the Contractor may be, or may be claimed to be, liable. Such insurance shall include, without limitation, coverage and endorsements as will insure the Contractor's obligations under the provisions of Subsection 3.18 herein. Insurance shall be purchased from a company licensed to do business in the state where the Project is located, and shall be written for not less than the limits of liability specified below or required by law, whichever is greater. The types of claims, required coverages and minimum limits of liability are as follows:

- ~~1~~ A. Claims under workers' compensation, Worker's Compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- ~~2~~ Claims acts; claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees; disease or death of employees. Insurance coverages shall include: Statutory Workers' Compensation, including Employer's Liability with a minimum limit of \$100,000.00 for each employee.
- ~~3~~ B. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- ~~4~~ Claims for damages insured by usual personal injury liability coverage;
- ~~5~~ Claims for damages, occupational sickness or disease, or death, by any person other than employees; claims for personal injuries which are sustained (1) by any person as a result of an act or omission directly or indirectly related to the employment of such person by the Contractor, or (2) any other person; claims for damages other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; property including loss of use resulting therefrom. Insurance coverages shall include:
 - Premise-Operations
 - Products-Completed Operations
 - Blanket Contractual – Such insurance and endorsements as will insure the obligations under the provisions of Subsection 3.18 of this Document.
 - Broad Form Property Damage
 - Personal Injury
 - Blanket Explosion, Collapse and Underground Property Damage
 - Operations of Independent Contractors

Policy Limits: General Aggregate	\$1,500,000.00
Products/Completed Operations Aggregate	\$1,500,000.00
Personal Injury	\$1,500,000.00
Each Occurrence	\$1,500,000.00
- ~~6~~ C. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and
- ~~7~~ Claims for bodily injury or property damage arising out of completed operations; and injury or death of any person, or any property damage, arising out of the ownership or use of any motor vehicle. Insurance coverage shall include:
 - Business Auto Liability insurance including owned, hired and non-owned vehicles with limits of \$1,500,000.00
 - Combined Single Limit for each accident for bodily injury and death, or property damage.
- D. The coverage limits required by Paragraphs (B) and (C) above may be achieved by the use of an Umbrella Excess Liability Policy.
- The limits of liability specified shall be considered minimum requirements.

All aforesaid insurance policies shall be underwritten with responsible insurance carriers, with Best's Ratings of not less than A and X and otherwise satisfactory to Construction Manager and Owner and licensed to provide insurance in the state in which the Project is located. Non-admitted carriers may be considered on an individual basis.

~~8~~ Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

Approval of the insurance by the Construction Manager or Owner shall not relieve or decrease the liability of the Contractor. The Construction Manager, Architect and Owner do not in any way represent that the insurance or limits of insurance specified above are sufficient or adequate to protect the Contractor's interests or liabilities, but are minimums.

The Contractor is responsible, at Contractor's expense and not a reimbursable expense, for providing any additional insurance Contractor deems necessary to protect Contractor's interest from other hazards or claims in excess of the aforementioned minimum insurance coverages.

The Construction Manager and Architect are intended third-party beneficiaries of the Contractor's obligations in this Section 11.1.

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§ 11.1.3 Certificates of insurance acceptable to the Owner shall be submitted to the Construction Manager for transmittal to the Owner with a copy to the Architect prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be ~~anceled~~canceled, materially changed or allowed to expire until at least 30 days' prior written notice has been given to the Construction Manager and Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause ~~the commercial liability coverage required by the Contract Documents to include (1) the Construction Manager, the Construction Manager's consultants, the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.~~ its Commercial General Liability Insurance, Automobile Liability Insurance and any Umbrella Liability Insurance, as described in Paragraphs B, C and D of Subsection 11.1.1, to be endorsed to name the Construction Manager, Architect and Owner as Additional Insureds, and such insurance shall be primary insurance without recourse to or contribution from any similar insurance carried by such named parties. The Additional Insured status must be reflected on the Contractor's Certificate of Insurance to Construction Manager and Owner. The Contractor shall provide Construction Manager with a copy of Contractor's Commercial General Liability Insurance policy or such Additional Insured endorsement to confirm Contractor's compliance with this Subsection.

...

§ 11.3.1 ~~Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.~~

§ 11.3.1.1 Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Architect's, Contractor's, and Construction Manager's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Construction Manager, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, adjoining or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner ~~as fiduciary~~ and made payable to the Owner ~~as fiduciary~~ for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner ~~as fiduciary~~ shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds ~~received as fiduciary~~, received. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner ~~as fiduciary~~ shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. ~~If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or distribution of insurance proceeds in accordance with the direction of the arbitrators.~~

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§ 11.4.1 ~~The Owner shall have the right to require the Contractor to~~ Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the ~~Contract.~~ Contract (the "Bond").

§ 11.4.2 ~~Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.~~ The Contractor shall provide as part of its bid, a valid and enforceable Bond which will run throughout the life of the Contract and its warranty periods. The Bond shall be issued by a corporate surety company authorized to do business in the state in which the Project is located and the surety company shall be subject to the Owner's approval. Fully executed copies of the Bond shall be provided to the Owner, Construction Manager and Architect.

§ 11.4.3 The minimum requirement for the Owner's approval of the Surety shall be that the Surety is listed by the United States Treasury Department as acceptable for bonding federal projects and that the bond amount is within the limit set by the Treasury Department as the net limit on any single risk. There shall be no affiliation between the Contractor and the Surety Company, Agent or Agency.

§ 11.4.4 For public work or other projects subject to statutory bond requirements, the bond form shall be the City of Duluth Performance Bond and Payment Bond included in the specifications, and shall comply with the statutory bond requirements of the state in which the Project is located.

§ 11.4.5 The Bond shall be in the amount of 100% of the full Contract Sum. When two part bonds are provided, the Bond shall be provided with 100% of the Contract Sum for the Performance Bond and 100% of the Contract Sum for the Payment Bond.

§ 11.4.6 The Bond shall guarantee the Contractor will perform each and every part of the Contract, cover all guarantees called for and insure prompt payment to all persons furnishing material or labor required in prosecution of the Work under the Contract. In the event of additions to the Contract, the Owner reserves the right to require evidence of additional bonding.

§ 11.4.7 The Bond shall provide: (1) for additions or deductions from the Work in any amount; (2) that completion time shall not be extended by reason of changes in the Work, unless agreed to at time of change; (3) that no notice of

aforsaid alterations, additions, or omissions need to be given the Surety; and (4) permit occupancy by the Owner at any time.

§ 11.4.8 Final acceptance of the Work shall not relieve the Contractor nor Surety from their obligations under this Contract, including warranties of materials, equipment, installation or service.

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§ 12.1.1 If a portion of the Work is covered contrary to the Construction Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by either, be uncovered for their observation and be replaced at the Contractor's expense without change in the Contract Time. The Contractor shall give timely notice to the Architect, through the Construction Manager, of the readiness of the work to be observed.

...

The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or ~~completed~~, unless the Owner elects to accept the Work as provided under Section 12.3. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. Work rejected before final completion shall be corrected prior to the processing of the final Contractor's Application and Certificate for Payment.

...

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. ~~During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.~~ If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. The expiration of the above one year or any other specified time period, or any other period prescribed by law, shall not relieve the Contractor of the obligation for the expense to correct any latent defect in the Work or deficiencies which are not readily ascertained, including but not limited to defective materials and workmanship, defects attributable to material substitutions for specified materials, substandard performance or otherwise not in compliance with the Contract Documents. Such latent defects or deficiencies shall be corrected as provided in this Subsection 12.2. Following the correction or replacement of any of the Work, as above specified, the Contractor shall correct any defects or deficiencies in corrected or replaced materials and workmanship, which is found within one year after the date of correction or replacement.

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§ 12.2.6 For the purpose of the commencement of the specified periods covered by this Article 12, or any other special specified period, the date of the inspection for Substantial Completion of the last unit, part or phase of the Work shall be the starting date of the period, for all of the Work, except for any work noted as incomplete or unsatisfactory at that time. The period covered by this article for said incomplete or unsatisfactory work shall start on the date of specifically noted dates of inspection for Substantial Completion, (or of acceptance, in writing, by the Owner of corrected Work), the date of the Architect's issuance of the final Certificate and Application for Payment on the entire Contract will be the start of the period.

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The Contract shall be governed by the law of the place where the Project is located ~~except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~located.

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§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Construction Manager and Architect timely notice of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. The Owner shall bear costs of ~~(1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.~~

...

The Owner and the Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, ~~but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and the Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.~~law.

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§ 14.2.2 When any of the above reasons exist, the Owner, ~~after consultation with the Construction Manager, and upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, with the advice of the Architect and Construction Manager,~~ may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, ~~seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety: Surety three (3) days' written notice, require the Surety to promptly take over and complete the Work under the terms of the Contract. Should the Surety fail to assume the obligations of completing the Work within three (3) days after receipt of the written notice, the Owner may, upon three (3) days' additional notice, terminate the employment of the Contractor (except the obligations of the Surety under the Bond) and may,:~~

- ~~.1~~ Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- ~~.2~~ Accept assignment of subcontracts pursuant to Section 5.4; and Contractor and may
- ~~.3~~ Finish. Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work. ~~Work; and/or~~
- ~~.2~~ Accept assignment of subcontracts pursuant to Section 5.4.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor and/or the Contractor's Surety shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the Owner completes the Work and the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including the Owner's additional costs, attorney's fees and compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, additional services, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages ~~exceed the unpaid balance, the Contractor for the Owner to complete the Work exceeds such unpaid balance, the Contractor and/or its Surety shall pay the difference to the Owner. The amount to be paid to the Contractor or to the Owner, as the case may be, shall, upon application, be certified shall be certified by the Owner or Contractor and approved by the Initial Decision Maker after consultation with the Construction Manager, and this obligation for payment shall survive termination of the Contract.~~

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and ~~costs for proven out-of-pocket loss with respect to materials, equipment, tools, and construction equipment and machinery incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed but excluding any fee or profit on any unperformed Work.~~

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to ~~mediation~~ litigation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

...

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect and Construction Manager, if the Architect or Construction Manager is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to ~~mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.~~ litigation.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.3 ~~Mediation~~ Intentionally Deleted.

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

~~§ 15.4 Arbitration~~~~Intentionally Deleted.~~

ARTICLE 16 ADDITIONAL CONDITIONS

§ 16.1 ADDITIONAL DEFINITIONS

~~§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~

§ 16.1.1 Provide: As used in connection with labor, materials and equipment shall mean to furnish and install complete, including connections to utilities or service, complete anchorage and suspension, fastening or anchor devices, trim, finish and other related work, unless specified otherwise.

§ 16.1.2 Accepted, approved, satisfactory, equal to, proper, as directed and similar terms: These shall mean the decision rests with the Architect, whose decision shall be final and binding upon the Contractor and subcontractors.

~~§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

§ 16.1.3 Project, Work, Job: In the technical sections or on the drawings, these terms may be used interchangeably and are synonymous. They shall mean the facility, construction and/or improvement within the intent and scope of the Contract Documents. The terms shall mean the entire facility, or separable parts as appropriate to the use of the term, including that under subcontract where applicable, and includes labor, materials, equipment, services and skill.

§ 16.1.4 Notice to Proceed: This shall be written notice by the Construction Manager to the Contractor to commence Work of the Contract, issued after execution of the Contract. In issuing the Notice, stipulations may be included as to time and other requirements that may condition commencement of the Work.

~~§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

§ 16.2 USE OF DRAWINGS AND SPECIFICATIONS

~~§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

§ 16.2.1 During construction, the Contractor shall examine and use all Specifications and Drawings for the Project, including those that may primarily pertain to other work the Contractor normally does not perform with his own forces. The Contractor shall use all of the Project Drawings and Specifications: for a complete understanding of the Project and the Work; to determine the type of construction and systems; for coordination; to determine what other work may be involved in various parts or phases; to anticipate and notify others when work will be required; and all other relevant matters related to the Project. The Contractor shall also be bound by all the requirements to complete his Work, that are applicable to, pertain to, or affect the Work, as may be shown or inferred by the entire set of Drawings and Specifications.

~~§ 15.4.4 Consolidation or Joinder~~

§ 16.3 PERIODIC PAYMENT ESTIMATE

§ 16.3.1 When required by the Owner to establish a schedule of money available to make payment of periodic Applications for Payment, the Contractor shall provide an estimate by months, of the anticipated amounts for each periodic payment. The retained percentage shall be considered in the estimate schedule, as well as anticipated job progress and materials delivery. The schedule will be deemed an estimate only, for financial planning purposes, and

the Contractor shall not be bound to conform to the schedule. The schedule may be required by the Contract Documents or requested by the Owner after Contract execution.

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 16.4 LAYOUT OF THE WORK

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 16.4.1 Each Contractor shall employ a qualified engineer or registered surveyor to stake out and locate the construction, locate property markers and other points as needed to properly locate the Work under this Contract.

§ 16.4.2 The Contractor shall recognize that the drawings necessarily are diagrammatic, in many instances. All work and in particular, exposed piping, ducts, conduit and similar items shall be neatly and carefully laid out to provide the most useful space utilization and the most orderly appearance. Except as otherwise indicated or directed, piping and similar work shall be installed as close to ceilings and walls as conditions permit, located to prevent interference with other work or with the use of the spaces in the manner required by the functions of the room and the Owner. Valves shall be located in inconspicuous but accessible places. Before proceeding with any work, particularly where exposed, the Contractor shall carefully plan the layout and review it with the Architect and Construction Manager for acceptability of location.

§ 16.4.4 The Contractor shall verify grades, line levels and dimensions shown on drawings and report any errors or inconsistencies to Architect, through the Construction Manager for decision before commencing work. The Contractor and subcontractor shall be responsible for the correct location, dimensions and elevations of their Work. As the Work progresses, the Contractor shall be responsible for the layout of the exact location of all partitions and similar features, as guide to all trades.

§ 16.5 GENERAL QUALITY OF WORK, INSTALLATION AND OPERATION

§ 16.5.1 All of the Work shall be strictly first quality, in materials, erection, installation and workmanship.

§ 16.5.2 The Contractor shall request interpretations from the Architect, through the Construction Manager, for the following: Work indicated on the Drawings or specified in such a manner as to make it impossible to produce Work of the highest quality within the space shown; possibilities of damaging effects of expansion and contraction; discrepancies found between Drawings or between Drawings and Specifications. If the Contractor does not request such interpretation, no excuse will be entertained thereafter for failure to carry out and guarantee the Work in a satisfactory manner. Elements of the Work intended to protect against the weather shall be guaranteed weatherproof and watertight.

§ 16.5.3 Proper performance of the Contract shall imply correct and proper placement, proper or published results for products and equipment, fitting and operation of fixed or movable and operating parts of the Work, including doors, windows, hardware and all systems and equipment. Materials and equipment shall be completed in every respect, with parts, connections, anchors, devices, backing, fittings and other necessary items, and shall be completely installed, anchored, fitted and placed in operating condition. Before buying, constructing or installing work, the Contractor shall notify the Architect of conditions which exist in the Contract Documents which will adversely affect proper operation of first quality installation.

§ 16.5.4 Throughout the Project, accommodate various materials and pieces of equipment that are fitted to other materials and equipment and various materials that are applied to which other materials attach. Take all reasonable precautions to insure materials, devices, items, equipment or other products can be satisfactorily applied or installed to each other or work of others and make necessary adjustments during preparation of shop drawings or in advance of field or shop work to accommodate other work.

§ 16.5.5 Materials or equipment shall be installed or applied according to directions of the manufacturer or recommendations of an association dealing primarily with materials, unless specifically designated otherwise. In no case shall installation, including any temporary work necessary (e.g., shoring), be below standard recommended by manufacturer. Where specified requirements exceed the manufacturer's standards, the specification shall govern. Fabrication (including reinforcing and accessories) and installation shall be provided to insure proper placement and use of the item or material under the location, use, condition, and available space to serve intended function and to meet code requirements. Equipment and devices shall be provided and installed to "fail safe" under normal operating conditions and it shall be Contractor's obligation to provide and install work in such manner.

§ 16.6 GENERAL FIRE SAFETY

§ 16.6.1 The Contractor shall exercise extreme care to maintain the exercise adequate fire safety precautions throughout construction. This shall include providing sufficient devices, watchmen, standby helpers or other precautions during construction, in use of temporary heat, welding, brazing, sweating, testing or other phases of work. Welding, brazing, cutting and sweating operations performed in vicinity of, or accessible to, combustible materials shall be adequately protected to make certain that sparks or hot slag do not reach the combustible materials and start a fire. Glass and glazed material shall be masked from splatter. When necessary to do cutting, welding, brazing, sweating, in vicinity of wood, or combustible material (and the combustible material cannot be removed), the materials shall be adequately protected with fireproof coverings. In addition, a helper shall be stationed nearby with property fire extinguishers to guard against sparks and fire.

§ 16.6.2 Whenever combustible materials have been exposed to sparks, molten metal, hot slag, or splatter, a watchman shall be kept at the place of work for at least two hours after completion to make sure that smoldering fires have not been started. Whenever cutting or welding operations are carried on in a vertical pipe shaft, a watchman to act as a fire guard shall be employed to examine floors below the point of cutting or welding. This fire guard shall be kept on duty at least two hours after completion of the work to guard against fires and he shall examine each level after this time, prior to leaving.

§ 16.7 RESPONSIBLE CONTRACTOR

§ 16.7.1 To the extent applicable, and to the full extent required by law, the Contractor (i) acknowledges that all provisions of Minn. Stat. § 16C.285 shall be fully incorporated herein by reference and made applicable to the Contract and (ii) shall comply with all provisions of Minn. Stat. § 16C.285, including, without limitation, verifying under oath to Owner the Contractor's compliance and providing and updating a list of the Contractor's first-tier subcontractors retained to provide any work on the Project. The Contractor is responsible to ensure compliance with the terms of Minn. Stat. § 16C.285 by all of its subcontractors. The Contractor shall indemnify the Owner and Construction Manager for all costs, expenses and damages (including reasonable attorney's fees) incurred by the Owner or Construction Manager as a result of the Contractor's failure to comply with the terms of this Section. The Contractor's failure to comply with this Section shall constitute a material breach of the Contract. All references to Minn. Stat. § 16C.285 in this Section shall mean the current version of such § 16C.285 applicable on the date of the Contract, including any replacement statute thereof.

§ 16.8 EXAMINATION OF BOOKS AND RECORDS

§ 16.8.1 The books, records, documents and accounting procedures and practices of the Contractor as they relate to this Contract are subject to examination of the Owner, and either the Legislative Auditor or the State Auditor, as appropriate, for a period of six (6) years following termination or expiration of this Contract.

~~§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.~~

PROJECT LABOR AGREEMENT

NO STRIKE, NO LOCKOUT

PUBLIC SECTOR

CITY OF DULUTH

Project Name:

City Project #:

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AGREEMENT

This Project Labor Agreement (hereinafter, the “Agreement”), is entered into effective the _____ day of _____, 20____, 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”), Owner’s Construction Manager-Agent (hereinafter “Construction Manager/General Manager”), and all “Contractors” on the Project.

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 Manager 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, including the Construction Manager/General Manager when it performs 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 Contractors 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 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 Contractors agree 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 Contractors recognize 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 Contractors shall furnish labor that can work in harmony with all other elements of labor employed on the 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.

Each 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 any 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 any 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 Manager 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 Manager 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 Contractors, 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 Construction Manager/General Manager or the Contractors.

Section 2. Building construction work shall be assigned by the Construction Manager/General Manager or the Contractors 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 Construction Manager/General Manager or the Contractors' 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 affected Contractor. The assignments made by the Construction Manager/General Manager or the Contractors shall be followed until such time as the dispute is resolved in accordance with this Section.

ARTICLE VIII - NO DISCRIMINATION

Section 1. The Contractors 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 Contractors 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 _____, 20____, 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 Contractors agree 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

By: _____

Its _____
(Printed Name/Title)

Date: _____

CONSTRUCTION MANAGER/GENERAL
MANAGER

By: _____

Its _____
(Printed Name/Title)

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

AGREEMENT TO BE BOUND
PROJECT LABOR AGREEMENT
PUBLIC SECTOR
CITY OF DULUTH

The undersigned contractor agrees that it has reviewed a copy of the Project Labor Agreement for the _____ Project located in _____, Minnesota with the Building and Construction Trades Council and further agrees to become a party to and bound to the foregoing Agreement.

Attest:

SIGNED FOR THE CONTRACTOR:

Dated: _____

Company Name

Company Address

Phone No., Job Site and/or Office

Fax No.

By: _____

Its: _____
Title

Work Scope 32-D – Permeable Paver Package

1.01 PERMEABLE PAVER PACKAGE

- A. **Scope of Work:** This Work Scope consists of the Work directly and indirectly required by the specification sections listed below, plus all project drawings, addenda, and other documents identified as part of the Agreement, regardless of design discipline, drawing sheet identification, or jurisdictional requirements.
- Specific Specifications Sections that are the responsibility of the Work Scope:

00 0000	Division 0 – Procurement Requirements & Conditions of the Contract	As it applies
01 0000	Division 1 - General Requirements	As it applies
02210	Finish Grading	As it Applies
02315	Excavation and Backfill	As it Applies
02515	Permeable Pavers	Complete

1.02 PROJECT SPECIFIC SCOPE CLARIFICATIONS

- A. **General Requirements for All Work Scope Categories:** Refer to Section 01 1210 for additional requirements affecting this Work Scope.
- B. **Earthwork:** Provide earthwork as indicated in accordance with Division 02 including, but not limited to:
- Site clearing not preformed under Site Clearing and Earthwork Package.
- C. **Dewatering Requirements:** Provide all necessary labor and equipment to perform the work of this Work Scope including daily pumping to keep excavated areas dry.
- Special coordination with concrete trade contractor during footing and foundation work is required.
 - Coordinate extent and duration of dewatering activities with Kraus-Anderson Construction Company.
- D. **Subdrainage System (drain tile):** Provide sub grade drainage system in accordance with Section 33 4600 including, but not limited to:
- Drainage system directly related to Permeable Pavers.
- E. **Permeable Pavers [02515]:** Provide permeable Pavers in accordance with Section 02515 including, but not limited to:
- Parking areas = Eco-Priora Paver**
 - Plaza area @ shelter = Thornbury Paver**
 - Delegated Design Requirements: Provide professional engineering services as required by this specification Section including engineering analysis, calculations, and certified shop drawings for segmental wall design.
- F. **Traffic Control:** Provide traffic control as required to perform work of this Work Scope.
- Provide traffic and street barrier as required.
- G. **Construction Cleaning:** Perform daily construction cleaning operations for debris generated by this Work Scope.
- Debris tracked or carried off site into traffic lanes must be cleaned up immediately.
- H. **Restoration of adjacent turf areas damaged by Construction:** This Work Scope is responsible to restore disturbed turf areas with sod (seeding is not acceptable) in accordance with requirements of Sections 02910 – 02934 Landscaping.

1.03 SPECIAL COORDINATION OR INSTALLATION REQUIREMENTS

- A. **Phase I and II Environmental Site Assessment Reports:** Reports are available at Kraus-Anderson Construction Company for review upon request.
- B. **Soil Borings:** Reports are available at Kraus-Anderson Construction Company for review upon request.
- C. **Field Engineering:** Kraus-Anderson will provide benchmarks and control line in accordance with requirements specified in Section 01 1210 - General Requirements for All Work Scopes.
- This Work Scope is responsible for all remaining layout required for this Work Scope.
 - Layout and engineering for shoring and temporary supports shall be included.
 - Layout and saw cutting, wall removals, shoring, installation of necessary support steel headers shall be included.
- D. **Acceptance of Substrates and Existing Conditions:** Starting work constitutes acceptances of existing conditions, preparatory work, and substrates that may affect the performance of this Work Scope.
- This Work Scope is responsible to coordinate and provide services of firm specialized in locating and documenting underground services and utilities similar to Gopher One.

Work Scope 32-D – Permeable Paver Package

1.04 MATERIAL HANDLING AND STORAGE

- A. **Delivery and Receiving of Materials:** Refer to Section 01 1210 General Requirements for Work Scopes for additional requirements.

1.05 UNIT PRICES, EQUIPMENT RENTAL, AND LABOR RATES

- A. NA

1.06 ALTERNATES

- A. NA

-- End --

Work Scope 33-A – Site Utility Package

1.01 SITE UTILITY PACKAGE

- A. **Scope of Work:** This Work Scope consists of the Work directly and indirectly required by the specification sections listed below, plus all project drawings, addenda, and other documents identified as part of the Agreement, regardless of design discipline, drawing sheet identification, or jurisdictional requirements.

1. Specific Specifications Sections that are the responsibility of the Work Scope:

00 0000	Division 0 – Procurement Requirements & Conditions of the Contract	As it applies
01 0000	Division 1 - General Requirements	As it applies
02110	Site Clearing	As it applies
02100	Site Preparation	As it applies
02315	Excavation and Backfill	As it applies
	Erosion and Sedimentation Controls	As it applies
02315	Excavation & Backfill	As it applies
02620	Subsurface Drainage	Complete

2015 City of Duluth Construction Standards

Complete

1.02 PROJECT SPECIFIC SCOPE CLARIFICATIONS

- A. **General Requirements for All Work Scope Categories:** Refer to Section 01 2410 for additional requirements affecting this Work Scope.
1. **The work of this scope is within the road right-of-way of the City of Duluth and all work must follow the City of Duluth Construction Standards.**
- B. **Site Clearing:** Provide general site clearing and preparation work in accordance with Section 02110 and as indicated on the Drawings and including, but not limited to:
1. As required for Site Utility work.
- C. **Earthwork:** Provide earthwork as indicated in accordance with Work Scope 31.A including, but not limited to:
1. As required for Site Utility work.
- D. **Dewatering Requirements:** Provide all necessary labor and equipment to perform the work of this Work Scope including daily pumping to keep excavated areas dry.
1. Coordinate extent and duration of dewatering activities with Kraus-Anderson Construction Company.
- E. **Excavation Support Systems:** Provide (engineer, construct, maintain, and monitor) excavation support systems as required, and as indicated, in accordance with Section 02315 including, but not limited to:
1. Removal of extraneous pile material and excess earth as a result of the piling operation from the site and disposed of in a legal disposal site is included in your proposal.
2. There is NO area for spoils storage on site; spoils are to be removed on a daily basis.
- F. **Site Utilities:** Provide site utilities as indicated and in accordance with Section 33 0000 including, but not limited to:
1. Storm drainage utilities
2. Storm drainage structures
- G. **Storm Drainage Structures provided by the Owner (CRP):** The city will provide **all 36" 250-lineal-feet-of-30"** diameter concrete reinforced pipe **with concrete aprons** (delivered to the site) for installation under this scope of work. **The contractor must provide all other pipe, structures, manholes, cover and accessories needed for this scope of work.**
- H. **Construction Grading:** Provide and maintain suitable OSHA grades around site and localized excavated areas to accommodate construction activities and equipment access.
1. Coordinate requirements with Kraus-Anderson Construction Company.
- I. **Storm Water Pollution Prevention Plan (SWPPP):** Provide labor and materials to install, maintain, monitor, and remove upon completion all elements and process required to administer the storm water compliance requirements for this Project as outlined within the documents and required by the State.
1. Construction entrances and exit areas
2. Perimeter control around construction site
3. Erosion control procedures
4. Sediment control procedures
5. Dewatering and drain basin procedures

Work Scope 33-A – Site Utility Package

- J. **Restoration of adjacent turf areas damaged by Construction:** This Work Scope is responsible to restore disturbed turf areas with sod (seeding is not acceptable) in accordance with requirements of Section 02934 - Landscaping.

1.03 SPECIAL COORDINATION OR INSTALLATION REQUIREMENTS

- A. ~~Phase I and II Environmental Site Assessment Reports: Reports are available at Kraus-Anderson Construction Company for review upon request.~~
- B. **Soil Borings:** Reports are available at Kraus-Anderson Construction Company for review upon request.
- C. **Field Engineering:** Kraus-Anderson will provide benchmarks and control line in accordance with requirements specified in Section 01 1210 - General Requirements for All Work Scopes.
1. This Work Scope is responsible for all remaining layout required for this Work Scope.
- D. **Acceptance of Substrates and Existing Conditions:** Starting work constitutes acceptances of existing conditions, preparatory work, and substrates that may affect the performance of this Work Scope.
1. This Work Scope is responsible to coordinate and provide services of firm specialized in locating and documenting underground services and utilities similar to Gopher One.
- E. **Coordination with Others:** Include coordination with other trades, including but not limited to the following:
1. Earthwork.
2. Landscape Package.
- F. **Traffic Control:** Provide traffic control spotters/flag personal and have them present at all times during your work activities.
1. Provide traffic and street barrier as required.
- G. **Construction Cleaning:** Perform daily construction cleaning operations for debris generated by this Work Scope.
1. Refer to Section 01 5010 for additional requirements.
2. Debris tracked or carried off site into traffic lanes must be cleaned up immediately.
- H. **Additional Information: The Owner will provide detailed design drawings from NCE.**

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1.04 MATERIAL HANDLING AND STORAGE

- A. **Delivery and Receiving of Materials:** Refer to Section 01 1210 General Requirements for Work Scopes for additional requirements.

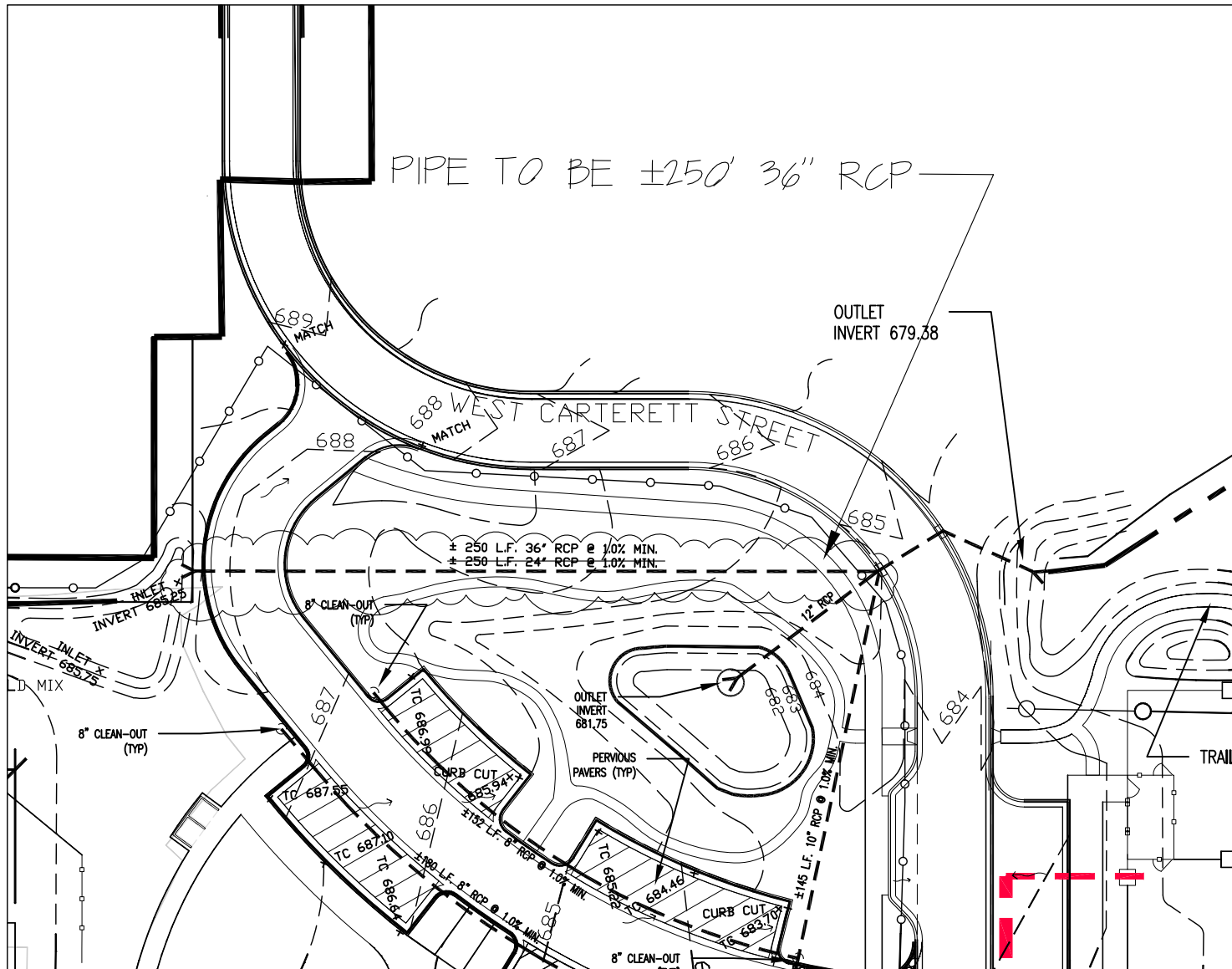
1.05 UNIT PRICES, EQUIPMENT RENTAL, AND LABOR RATES

- A. NA

1.06 ALTERNATES

- A. NA

-- End --



RCP PIPE ADDENDUM #1

NTS

SAS

LANDSCAPE ARCHITECTURE

ASSOCIATES

WWW.SASLANDARCH.COM

219 WEST FIRST STREET, SUITE 350
DULUTH, MN 55802
(P) 218.391.1335
(F) 218.722.6697

GARY NEW DULUTH COMMUNITY
CENTER
DULUTH, MN
RCP PIPE ADDENDUM #1

Date: July 31, 2015

Project Number

13340

2015

City of Duluth, Minnesota Construction Standards

**Public Works & Utilities
Engineering Division
Duluth, MN
February 19, 2015**



C. Basis of Payment

Payment for the items below will be made at the Contract bid price per unit, which shall be compensation in full for all labor, equipment, and material costs necessary to complete the work including, but not limited to, excavation, removals, aggregate bedding, reinforcement bar, structural concrete, backfill, and surface finishing.

<u>Item</u>	<u>Description</u>	<u>Unit</u>
2411.607	Concrete Steps	Cubic Yard
2411.607	Concrete Retaining Wall, Type L	Cubic Yard

2451 EXCAVATION, BACKFILL AND COMPACTION FOR UTILITIES

This work shall consist of furnishing all materials, labor, equipment, and other services as are necessary for preparing the site for work, the excavating, preparing the trench for the utility pipeline to be altered or installed, the backfilling and compaction. The excavation and backfill aspects of the work required for sewer, water, and gas utilities shall meet MN/DOT 2451 except as modified in the following:

A. DESCRIPTION

MN/DOT 2451.1 Description is supplemented with the following:

The City of Duluth considers sanitary, storm, water, and gas utility pipe, manholes, catch basins, hydrants, and valves to be 'prefabricated'.

B. USE OF ON-SITE MATERIALS

Where acceptable (suitable) select grading material **is available** within the project site, the select grading materials shall be utilized for backfilling pipe trench from the top of pipe encasement zone up to the top of subgrade (bottom of road section) at the direction of the Engineer.

C. MATERIALS

MN/DOT 2451.2 Materials is supplemented with the following:

1. Suitable On-Site Backfill Material

Suitable materials shall be defined as a mineral soil reasonably free of foreign materials (rubbish, debris, etc.), frozen clumps, aggregate larger than 3 inches, rock, concrete or bituminous chunks, and other unsuitable materials, that may damage the pipe installation, prevent thorough compaction, or increase the risks of after settlement unnecessarily. Suitable backfill shall meet the provisions of MN/DOT 2105.1A.6 Select Grading Material. The Engineer shall determine if any material is suitable.

2. Imported Granular Materials for Pipe Bedding and Encasement

Granular materials furnished for foundation, bedding, pipe encasement, or other purposes as may be specified shall consist of any natural mineral aggregate such as sand, gravel, crushed rock, crushed stone, that shall meet the gradation requirements specified on the Standard Details, the Contract Drawings and the Special Provisions.

3. Imported Granular Materials for Manholes and Catch Basins

Granular materials furnished for foundation and bedding shall consist of granular materials as specified on the Standard Details, the Contract Drawings and the Special Provisions. Structure backfill for manholes and catch basins shall meet MN/DOT 3149.2.D.1 Granular Backfill.

4. Imported Materials for Backfill

Where acceptable select grading material **is not available** within the project site, the Contractor shall furnish granular backfill meeting MN/DOT 3149.2.D.1 Granular Backfill or common backfill meeting MN/DOT 2105.1.B Common Borrow which shall be utilized for backfilling from the top of pipe encasement zone up to the top of subgrade (bottom of road section) at the direction of the Engineer.

Where the backfill materials are not specified in the Plans or Special Provisions, it shall be Granular Backfill meeting MN/DOT 3149.2.D.1. (<20% passing No.200 sieve/1in).

D. CONSTRUCTION

1. General Provisions

- a) Protection of Surface Structures. All surface structures and features located outside the permissible excavation limits for underground installations, together with those within the construction areas which are indicated in the Contract Drawings as being saved, shall be properly protected against damage and shall not be disturbed or removed without approval of the Engineer. Within the construction limits, as required, the removal of improvements such as paving, curbing, walks, turf, etc., shall be subject to acceptable replacement of underground work, with the expense of removal and replacement being borne by the Contractor to the extent that separate compensation is not specifically provided for in the Contract.

Obstruction such as street signs, traffic control signs, guard posts, small culverts, and other items of prefabricated construction may be temporarily removed during construction provided that essential service is maintained in a relocated setting as approved by the Engineer and that nonessential items are properly stored for the duration of construction. Upon completion of the underground work, all such items shall be replaced in their proper setting at the sole expense of the Contractor.

- b) Interference of Underground Structures. When any underground structure interferes with the planned placement of the pipeline or appurtenances to such an extent that alterations in the work are necessary to eliminate the conflict or avoid endangering effects on either the existing or proposed facilities, the Contractor shall immediately notify the Engineer and the Owner of the affected structure. When any existing facilities are endangered by the Contractor's operations, he shall cease his operations at the site and take such precautions as may be necessary to protect the in-place structures until a decision is made as to how the conflict will be resolved.

The City of Duluth gas utility must be notified 2 working days prior to any excavation or directional drilling within 6 feet of a 6 inch or larger natural gas main. Department personnel will be on site to monitor excavation and inspect any exposed steel main 6 inches or larger. Notify the Engineering Division at 730-5200 to coordinate this inspection.

The Contractor shall notify the Engineer immediately any time a steel natural gas main smaller than 6 inches is exposed within an excavation. Contact the Engineering Division at 730-5200 to coordinate an inspection of the exposed main.

Without specific authorization from the Engineer, no essential utility service shall be disrupted, nor shall any change be made in either the existing structures or the planned installations to overcome the interference. Alterations in existing facilities will be allowed only to the extent that service will not be curtailed unavoidably and then only when the encroachment or relocation will satisfy all applicable regulations and conditions.

Whenever alterations are required as a result of unforeseen underground interferences not due to any fault or negligence of the Contractor, the Engineer will issue a written order covering any additional or extra work involved and specifying the revised basis of payment, if any. Any alterations made strictly for the convenience of the Contractor shall be subject to prior approval. If an alteration diminishes the Contractor's responsibilities under the Contract in providing services or materials, a deduction will be made from the Contractor's final payment by a change order. No extra compensation will be allowed for delays caused by the interference of underground structures.

- c) Temporary Surface Measures. While any open excavations are maintained, the Contractor shall have available a supply of steel plates suitable for temporary bridging of open trench sections where either vehicular or pedestrian traffic must be maintained. Use of the plates shall be as directed

or approved by the Engineer and where installed they shall be secured against possible displacement and be replaced with the permanent structure as soon as possible.

2. Excavation and Repair of Trench

- a) Operational Limitations and Requirements. Excavating operations shall proceed only so far in advance of pipe installation as will satisfy the need for coordination of work and permit advance verification of unobstructed line and grade as planned. At no time shall over 400 lineal feet of excavated trench be open at one time. Where interference with existing structures is possible or in any way indicated, and where necessary to establish elevation or direction for connection to in-place structures, the excavating shall be done at those locations in advance of the main operation so actual conditions will be exposed in sufficient time to make adjustments without resorting to extra work or unnecessary delay.

All installations shall be accomplished by open trench construction except for short tunnel sections approved by the Engineer and with the exception that boring, directional drilling, jacking, insertion in existing pipe or tunnel construction methods shall be employed where so specifically required by the Contract Drawings or Special Provisions. Installation of pipe through tunnel excavations will be allowed only where the surface structure can be properly supported and the backfill restored to the satisfaction of the Engineer.

The excavating operations shall be conducted so as to carefully expose all in-place underground structures without damage. Wherever the excavation extends under or approaches so close to an existing structure as to endanger it in any way, precautions and protective measures shall be taken as necessary to preserve the structure and provide temporary support. Hand, vacuum, or other non-evasive methods of excavating shall be utilized to probe for and expose such critical or hazardous installations as gas pipe and power or telephone cables.

The Engineer shall be notified of any need for blasting to remove materials which cannot be broken up mechanically, and there shall be no blasting operations conducted until the Engineer's approval has been secured. All blasting shall be performed in accordance with 2105/2451 ROCK BLASTING AND VIBRATION CONTROL specifications.

- b) Classification and Disposition of Materials. Rock will be paid for separately from other unclassified materials, either as a separate Contract Item or as an Extra Work Item when no bid price is applicable. All other materials encountered in the excavations, with the exception of items classified for

payment as structure removals, will be considered as Unclassified Excavation. Unclassified materials shall include muck, rubble, wood debris, and boulder stone, masonry, or concrete fragments less than one quarter cubic yard in volume, together with other miscellaneous matter that can be removed effectively with power operated excavators without resorting to drilling and blasting.

For water, sanitary sewer and storm sewer, Rock Excavation shall be defined to include all hard, solid rock in ledge formation, bedded deposits and unstratified masses; all natural conglomerate deposits so firmly cemented as to present all the characteristics of solid rock; and any boulder, stone, masonry or concrete fragments exceeding **one cubic yard in volume**. Materials such as shale, hard pan, soft or disintegrated rock which can be dislodged with a hand pick or removed with a power operated excavator will not be classified as Rock Excavation.

For natural gas pipe, Rock Excavation shall be defined to include all hard, solid rock in ledge formation, bedded deposits and unstratified masses; all natural conglomerate deposits so firmly cemented as to present all the characteristics of solid rock. Boulder Excavation shall be defined to include any boulder, stone, masonry or concrete fragments exceeding **one-quarter cubic yard in volume**. Materials such as shale, hard pan, soft or disintegrated rock which can be dislodged with a hand pick or removed with a power operated excavator will not be classified as Rock Excavation or Boulder Excavation.

Excavated materials will be classified for reuse as being either suitable or unsuitable for other specified use as determined by the Engineer. All suitable materials shall be reserved for backfill where allowed and to the extent needed as called for on the Contract Drawings or in the Special Provisions, and any surplus remaining shall be utilized for other construction on the project as may be specified or ordered by the Engineer. To the extent practicable, granular materials and topsoil shall be segregated from other materials during the excavating and stockpiling operations so as to permit best use of the available materials at the time of backfilling.

All excavated materials reserved for backfill or other use on the project shall be stored at locations approved by the Engineer that will cause a minimum of inconvenience to public travel, adjacent properties, and other special interests. The material shall not be deposited so close to the edges of the excavations as would create hazardous conditions, nor shall any material be placed so as to block the access to emergency services. All materials considered unsuitable by the Engineer, for any use on the project, shall be

immediately removed from the project and disposed of as arranged for by the Contractor.

- c) Excavation Limitations and Requirements—Open Trench. Trench excavating shall be to a depth that will permit preparation of the trench bottom as shown on the Contract Drawings and installation of the pipeline and appurtenances at the prescribed line and grade, except where alterations are specifically authorized. Trench widths shall be as shown on the Standard Details and Contract Drawings and shall be sufficient to permit the pipe to be laid and joined properly and the backfill to be placed and compacted as specified. Extra width shall be provided as necessary to permit convenient placement of sheathing and shoring, to accommodate placement of appurtenances, or to make connections. No payment will be made for extra width required for the contractors shoring. The contractor shall notify the engineer prior to excavating any additional material outside the standard trench width.

Excavations shall be extended below the bottom of structure grade only if necessary to accommodate any required bedding material. When rock or unstable foundation materials are encountered at the established grade, additional materials shall be removed as specified or ordered by the Engineer to produce an acceptable foundation. Unless otherwise indicated or directed, rock shall be removed to an elevation at least six inches below the bottom surface of the pipe barrel.

Minimum and maximum width of utility trenches shall be as shown on the Standard Details or Contract Drawings.

Maximum allowable trench width for combined utilities shall be the maximum required separation between pipelines plus the outside diameters of each pipe plus 24 inches.

The maximum allowable trench widths shown on the Standard Details or Contract Drawings shall be used to establish maximum payment volume for granular backfill and rock excavation. Where the trench width was exceeded due to conditions which the Contractor could have controlled using reasonable methods to secure a trench, no additional payments for granular backfill will be made.

When no other grade controls are indicated or established for the pipeline, the excavation and foundation preparations shall be such as to provide a minimum cover over the top of the pipe as specified. Trench widths shall allow for at least six inches of clearance on each side of the joint hubs. The

width of the trench at the ground surface shall be held to a minimum to prevent unnecessary destruction of the surface structures.

- d) Sheathing and Braced Excavations. All excavations shall be sheathed, shored and braced as will meet all requirements of OSHA; shall comply with any specific requirements of the Contract; and prevent disturbance or settlement of adjacent surfaces, foundations, structures, utilities, and other properties. Any damages to the work under contract or to adjacent structures or property caused by settlement, water or earth pressures, slides, cave-ins, or other causes due to failure or lack of sheathing, shoring or bracing or through negligence or fault of the Contractor in any manner shall be repaired by the Contractor at his expense and without delay.

Where conditions warrant extreme care, the Contract may require special precautions to protect life or property, or the Engineer may order the installation of sheet piling of the interlocking type or direct that other safety measures be taken as he deems necessary. Failure of the Engineer to order correction of improper or inadequate sheathing, shoring, or bracing shall not relieve the Contractor of his responsibilities for protection of life, property, and the work. The contractor shall assume full responsibility for proper and adequate placement of sheathing, shoring, and bracing, wherever and to such depths that soil stability may dictate the need for support to prevent displacement. Bracing shall be so arranged as to provide ample working space and so as not to place stress or strain on the in-place structures to any extent that may cause damage.

Sheathing, shoring and bracing materials shall be removed only when and in such a manner as will assure adequate protection of the in-place structures and prevent displacement of supported grounds. Sheathing and bracing shall be left in place only as required by the Contract or ordered by the Engineer. Otherwise, sheathing and bracing may be removed as the backfilling reaches the level of respective support. Wherever sheathing and bracing is left in place, the upper portions shall be cut and removed to an elevation of three feet or more below the established surface grade as the Engineer may direct.

All costs of furnishing, placing and removing sheathing, shoring and bracing materials, including the value of materials left in place as required by the Contract, shall be included in the prices bid for pipe installation and will not be compensated for separately. When any sheathing, shoring or bracing materials are left in place by written order of the Engineer, in the absence of specific requirements of the Contract to do so, payment will be made for these materials as an Extra Work Item, including waste material resulting from upper cut-off requirements.

- e) Preparation and Maintenance of Foundations and Bedding. Foundation preparations shall be conducted as necessary to produce a stable foundation and provide continuous and uniform pipe bearing between bell holes. Over excavation shall be performed as necessary to allow installation of bedding where called for on the Standard Details, Contract Drawings or Special Provisions. The initial excavation or bedding operations shall produce a subgrade level slightly above finished grade as will permit hand shaping to finished grade by trimming of high spots and without the need for filling of low spots to grade. Bell hole excavations shall be made at each joint as will permit proper joining of pipe and fittings.

Where the foundation soil is found to consist of materials that the Engineer considers to be so unstable as to preclude removal and replacement to a reasonable depth to achieve solid support, a suitable foundation shall be constructed as the Engineer directs in the absence of special requirements therefore in the Contract. The Contractor may be required to furnish and drive piling and construct concrete or timber bearing supports or other work as may be provided for in an Extra Work order.

Care shall be taken during the final subgrade shaping to prevent any over-excavation. Should any low spots develop, they shall only be filled with approved material, which shall have optimum moisture content and be compacted thoroughly. The finished subgrade shall be maintained free of water and shall not be disturbed once established. Where pipe lowering operations are to occur, excavation may be required as necessary to remove pipe slings.

All costs of excavating below grade and placing foundation or bedding materials as required shall be included in the unit price bid for the related utility. Any excavation below grade and any foundation or bedding aggregates required by order of the Engineer in the absence of Contract requirements therefore will be compensated for separately as Extra Work items.

f) Dewatering

All excavation for utility pipe or structures shall be dry and free from water as necessary to provide a stable foundation. The Contractor shall provide all necessary dewatering equipment and all necessary equipment or materials for water quality treatment when necessary. Discharge from dewatering operations shall meet all federal, state and city standards prior to entering any water course or storm sewer.

MN/DOT 2451.3.D Backfilling Excavations is supplemented with the following:

3. Backfilling Operations

- a) General Requirements. Sequence of operations necessary prior to commencing final backfilling may be governed by the Standard Details, Contract Drawings, Special Provision, or the Specifications. Backfilling prior to completing other requirements will, at the option of the Engineer, result in removal of backfill as necessary at no extra cost to the City. Elevations and measurements of existing or new exposed utilities are of primary importance prior to backfilling.

All pipeline excavations shall be backfilled as will restore pre-existing conditions as the minimum requirement, and fulfill all supplementary requirements indicated in the Standard Details, Contract Drawings and Specifications. The backfilling operations shall be started as soon as conditions will permit on each section of pipeline, so as to provide continuity in subsequent operations and restore normal public service as soon as practicable on a section-by-section basis.

- b) Temporary Aggregate Base Surface. Trench surfaces which are to be restored with concrete or bituminous pavements constructed by others shall have the top 18 inches backfilled to match the elevation of the existing surface with MN/DOT 3138 Class 5 aggregates. The temporary surface shall be opened to traffic where necessary and maintained by the Contractor until immediately prior to paving. At such time, the surface shall be excavated to provide for the depth of the permanent pavement.
- c) Placement Procedure and Compaction. Initial backfill and pipe encasement materials shall be installed immediately following pipe installation. The pipe encasement area shall include all backfill up to 12 inches above the top of pipe for water and sewer and 6 inches for natural gas lines. The pipe shall be secured in place with backfill materials to the mid-point prior to covering the pipe or compacting. Utility trench compaction will be measured by MN/DOT 2105.3.F.1 Specified Density method as follows:
- Compaction of materials placed within the pipe bedding and encasement zones shall be accomplished with portable or hand equipment methods, so as to achieve thorough consolidation under and around the pipe and avoid damage to the pipe. The materials at this level shall be thoroughly compacted with a mechanical compactor to meet **95% of maximum standard proctor density.**
 - Above the pipe encasement zone (and below the top of subgrade), backfill materials shall be carefully placed in relatively uniform depth layers

spread over the full width and length of the trench section and as will provide simultaneous support on both sides of the excavation. Compaction of backfill for utility pipe trench shall be meet **100% of maximum** standard proctor density for the **upper 3 feet below the top of subgrade**; and **95% of maximum** standard proctor density **below the upper 3 feet**.

- Compaction of backfill for manholes and catch basin structures shall meet **100% of maximum** standard proctor density for **full depth** from bedding up to top of subgrade.

These compaction requirements apply to both mainline and service pipes with no differentiation made for pipe or structures located “outside” the roadway.

The minimum sampling and testing for compaction shall be in accordance with Appendix B Schedule of Materials Testing – City of Duluth Street and Utility Projects included in these specifications. Additional testing may be performed as determined by the Engineer.

Compaction of the in-place layer shall be acceptably completed before placing material for a succeeding layer thereon. The manner of placement, layer thickness, compaction equipment, and procedure effectiveness shall be subject to approval of the Engineer. The use of heavy roller type compaction equipment shall be limited to safe pipe loading.

The maximum loose thickness of each backfill layer shall be 8 inches, except that 12 inches will be permitted for Granular Materials placed above an elevation one foot above the top of pipe, and with the provision that, by authority of the Engineer in consideration of the demonstrated capability of special type vibratory compactors, these maximums may be increased at his discretion.

Until final acceptance of the project, the Contractor shall assume full responsibility and expense for all backfill settlement and shall refill and restore the work as directed to maintain an acceptable surface condition. All additional materials required shall be furnished without additional cost to the City.

- d) Surplus and Waste Material. All surplus or waste materials remaining after completion of the backfilling operations shall be disposed of in an acceptable manner within 24 hours after completing the backfill work on each particular pipeline section. Disposal at any location within the project limits shall be as specified, or as approved by the Engineer; otherwise, disposal shall be

accomplished outside the project limits at the Contractor's discretion. The backfilling and surplus or waste disposal operations shall be a part of the work required under the pipeline installation items, not as work that may be delayed until final cleanup. No additional payments will be made for disposal of surplus or waste material.

E. MEASUREMENT

MN/DOT 2451.4.A.2 Prefabricated Structures is hereby deleted and replaced with the following:

A.2 Excavation for Prefabricated Structures

No measurement will be made for excavation of prefabricated structures (utility pipes and structures), except where rock excavation is required. The Engineer will measure rock excavation for prefabricated structures by volume in accordance with the limits shown in the City of Duluth Standard Details.

MN/DOT 2451.4.B Granular Materials is hereby deleted and replaced with the following:

B1 Granular Materials for Bedding and Encasement

No measurement will be made for granular materials utilized to construct foundation bedding and backfill within the pipe encasement zone.

B2 Granular Materials for Manholes and Catch Basins

No measurement will be made for granular materials utilized to construct foundation bedding and structure backfill of manholes and catch basins.

MN/DOT 2451.4 Method of Measurement is supplemented with the following:

C1 On-Site Materials for Backfill

No measurement will be made for select grading materials utilized for backfill of prefabricated structures.

C2 Imported Materials for Backfill

The Engineer will measure imported materials for backfill above the encasement zone and below the top of subgrade by volume in accordance with the limits shown in the City of Duluth Standard Details, when required in the Plans, or at the direction of the Engineer.

D Imported Materials for Foundation Stabilization

E. Measurement and Payment

Pipe placed by horizontal directional drilling shall be paid for under the applicable utility. No payment shall be made for a pipe with a tracer wire that has not passed a continuity test.

2505 ADJUST VALVE BOX - GAS

All work performed around existing gas mains shall be in accordance with the provisions of the Standard Specifications for High Pressure Gas Mains, Transmission Line, and Service Installation, Welding Qualifications and Qualifications for Joining PE Pipe (Appendix A), included in these specifications, except as modified herein.

A. Construction Requirements

1. Adjust Valve Box

This work shall consist of adjusting existing gas valve boxes to new surface elevations without changing the elevation of the valves.

2. Replacement Valve Boxes

The Contractor shall take care to salvage existing valve boxes for reuse. If the Engineer determines that the existing valve box is too badly deteriorated to be reused, the Engineer will provide a replacement valve box for the contractor to install.

B. Measurement and Payment

Measurement for adjust valve box will be by the number of gas valve boxes adjusted to final grade. Payment for adjust gas valve box will be made item 2505.602 (Adjust Valve Box – Gas) at the contract price per each, which shall be compensation in full for all labor, materials, and equipment to complete the work.

2506 MANHOLES AND CATCH BASINS

Manhole and Catch Basin construction and reconstruction, both storm and sanitary, shall be performed in accordance with the provisions of MN/DOT 2506, except as modified below:

A. Materials

1. Manholes

All sanitary manholes, air release manholes and cleanout manholes shall meet the requirements of **City Standard Detail San-11**. The Contractor shall be responsible for providing openings in the manhole section at the proper locations according to the contract drawings. No steps will be allowed in the manholes. All manholes must have integral concrete base. Manhole flexible sleeves for sanitary manholes

shall be NPC Kor-N-Seal¹, Press Seal PSX Direct Drive, Z-Lok Boot Connector, or approved equal. All pipe sleeves must be water tight.

Sectional concrete manhole units for storm water shall conform to the requirements of MN/DOT 3622 and Standard Plate M, Design F, 4006L, Design G or Standard Plate 4020J. "O" ring gaskets shall be used in the joints in the barrel sections. Unless otherwise shown in the Plans, the **cone sections shall be concentric** (Type A). No steps will be allowed in the manholes.

2. Catch Basins

Catch basins shall conform to Design G on Standard Plate 4006L. Catch basin frame castings shall be as shown on the Standard Details. Catch basin grate castings shall be 816 on Standard Plate 4154B. Catch basin curb box castings shall be 823A on Standard Plate 4160D. Catch basin castings shall be supplied by the Contractor.

3. A round cone with a 27 inch nominal diameter opening shall be used for catch basins and manholes.

4. Manhole Castings

Manhole Casting Assemblies with lids shall conform to Standard Detail for sanitary and storm manholes.

5. Manhole Adjustment Rings

Except where concrete encased casting collar is required in the Plans, the manhole adjusting rings shall be molded from high-density polyethylene as defined in ASTM D-1248. The complete adjustment system utilizing the HDPE rings shall consist of the rings, sealed to the manhole structure, casting and one another by means of an approved butyl sealant. Concrete adjustment rings shall not be used.

6. Casting Extensions

Casting Extensions shall be Neenah R-1979 or ESS Brothers paving adjustment ring. Extensions shall be cast iron.

7. Non-Shrink Grout or Cement-Base Polymer Modified Patching and Repair Mortar

Non-shrink grout shall be a non-metallic type grout which is durable in wetting and drying, freezing and thawing conditions and shall conform to the requirements set forth in ASTM C 1107-01. Cement-based polymer modified patching mortar shall conform to the requirements set forth in ASTM C 109, ASTM C 490-77 and ASTM C 807-83 (modified).

8. Bedding

Manholes and Catch Basins shall be bedded on granular material meeting MN/DOT 3149.2.H Coarse Filter Aggregate.

8. Structure Backfill

Unless otherwise noted in the Plans, or directed by the Engineer, manholes and catch basins shall be backfilled with granular material meeting MN/DOT 3149.2.D.1 Granular Backfill.

B. Construction Requirements

1. Manholes and Catch Basins shall be bedded on 6-inches of Coarse Filter Aggregate.
2. When using plastic pipe, manhole water stops supplied by the manufacturer shall be installed.
3. All annular wall space surrounding the in place pipes shall be completely filled with mortar or concrete and the inside bottom of each manhole shall be shaped with fresh concrete to form free flow through invert troughs as directed. The troughs shall be as deep as a half-pipe and the shelves shall slope up 3 inches from the trough to the wall.
4. When a sewer connects with an existing manhole or catch basin, the Contractor shall make a suitable connection through the wall of the manhole or catch basin and shall reshape the invert to assure a smooth and unobstructed flow line through. All pipe connections to existing manholes shall be water tight.
5. Non-shrink grout or cement-based polymer modified patching mortar shall be used to patch lifting holes in manholes and catch basins.
6. The Contractor shall utilize a combination of flat and sloping manhole adjustment rings to adjust the casting to the slope and grade as specified below.
7. Manhole casting assemblies with lids shall be installed in accordance with Standard Details SAN-3, SAN-3A, STRM-5, and STRM-5A. The straightedge will be placed across the center of the casting and will touch both sides of the pavement. The measurement will be taken at the center of the casting. Castings that are measured at more than 3/8 inch below the pavement prior to final acceptance of the project will be raised to the prescribed depth of 3/8 inch. All costs associated with this corrective action will be assumed by the contractor.
8. Casting Extensions shall only be used where approved by the engineer on pavement overlay projects. Casting extensions shall not be used to adjust incorrectly installed manhole castings. Where casting extensions are installed, only one may be used per casting to achieve the proper height adjustment. All casting extensions shall be glued into place with a manufacturer recommended adhesive. The Contractor shall measure all manhole castings to determine the appropriate size of each casting extension.

9. All sanitary manholes must pass a vacuum test as specified elsewhere in this specification. Any manholes which do not pass the vacuum test or have visible leakage within the manhole will not be accepted.
10. All storm manhole castings and catch basin castings shall be wrapped with geotextile fabric as shown on the standard details.

C. Basis of Payment

Payment for Drainage Structures, Manholes and Catch Basins shall be at the contract unit price per unit of measure and shall include, in addition to the MN/DOT 2506.5 Basis of Payment , furnishing and placing granular materials for bedding and backfill.

2506 CONCRETE ENCASED CASTING COLLAR

This work shall consist of vertical adjustment, leveling, and place concrete encasement collar around manhole castings in accordance with MN/DOT 2506 and the following provisions:

A. Description

The process for adjusting manhole frame and ring castings to finish grade shall be done by utilizing a pipe adjustment ring for temporary support and a concrete pavement encasement collar. The adjustment pipe and concrete collar system shall consist of providing a temporary cover plate prior to paving; cutting and extracting the pavement and base section in a circular layout around the perimeter of the manhole; installing a watertight PVC pipe adjusting ring (casting support) on top of the manhole structure; installing the manhole frame and casting assembly; and placing a reinforced concrete encasement collar around the casting frame to match the adjacent pavement grades.

B. Materials

1. PVC pipe adjustment ring (casting support) in accordance with MN/DOT 2503 or approved equal.
2. Waterstop shall be a **controlled expansion butyl rubber** water stop meeting the following:
 - a. Specific Gravity shall be 1.55 (+/- 5%) when tested in accordance with ASTM D-71.
 - b. Volatile Matter shall not exceed 1% when tested in accordance with ASTM D-6.
 - c. Minimum application temperature range between -10 degrees F to 125 degrees F.
 - d. Minimum service temperature range between -30 degrees F to 180 degrees F.
3. Sealant shall be **elastomeric material** intended for the use depicted in the Plans and/or Standard Details.
4. Reinforcement for encasement collar shall **epoxy coated** in accordance with MN/DOT 3301.

5. Concrete for encasement collar shall be **Mix No. 3Y43** in accordance with MN/DOT 2301 and MN/DOT 2461.

C. Construction Requirements

1. Temporary Cover Plate Installation

- a. The manhole shall be built with the top of the manhole cone 12" below proposed asphalt elevation.
- b. The area around the manhole must be backfilled with compacted aggregate base. This aggregate must surround the entire manhole to the elevation of the top of the cone section or the bottom of the proposed roadway aggregate, whichever is lower.
- c. A steel plate shall be equipped with a device that will prevent excessive horizontal movement of the steel plate during the roadway construction process. The steel plate shall be centered on top of the cone, free of sealants and adhesives that would inhibit the ability to easily remove it from the manhole cone. The location of the center of the steel plate shall be preserved, through measurements and/or other accurate means of relocation, before paving.

2. Pavement Removal and Preparation

- a. Precautions must be taken to prevent debris from entering the manhole during the entire removal and reconstruction process. This will prevent the possibility of plugged sewers, interruptions in sewage flow and time required to remove the debris after construction.
- b. Cut and remove the asphalt pavement structure, around the manhole casting, with a rotating cutter device that creates a circle with a minimum diameter of 54" and centered about the casting. Dispose of the asphalt off-site.
- c. Remove the casting (manhole rim and cover) from the top of the manhole or manhole adjusting ring. Inspect the rim and cover for defects. If defects are present, replace with a new rim/cover as needed. If defects are not present, clean & retain for use in reconstruction.
- d. Remove all adjusting rings to the top of the manhole structure (concrete cone). Dispose of this material.
- e. Remove all aggregate around the manhole that has been exposed by the asphalt removal and dispose of this aggregate. The aggregate must be removed to a minimum of **2"** below the level of the top of the concrete cone.
- f. Clean and inspect the top surface of the concrete cone. The surface should be

smooth and free of bumps and pits that may prevent a good water tight seal. Grind the surface as needed to remove protrusions. Utilize compressed air to blow dust and debris from the surface after grinding. Clean the surface with acetone. Utilize hydraulic cement, according to manufacturer's recommendations, to fill in depressions.

g. A PVC pipe shall be used as an adjustment ring and temporary casting support. PVC adjustment ring must be cut to the exact profile and/or cross-slope of the road in all directions such that when the manhole rim and cover are resting on top of the support liner, the top of the casting shall be exactly **0.25 inch below flush** with the pavement surface in all directions. The adjustment ring support shall be marked in such a way, upon completion of the cutting process, that rotation does not occur, which could be detrimental to the end product. The top and/or bottom of the adjustment ring support shall also be marked to prevent the support from being installed up-side down, which could be detrimental to the end product.

h. Apply a liberal amount of elastomeric sealant to the bottom of the adjustment ring support and set in place on top of the concrete cone while making sure it is properly aligned. This will create a water tight seal between the adjustment ring support and the concrete cone.

i. Apply a liberal amount of elastomeric sealant to the top of the adjustment ring support. Set the manhole frame casting on the adjustment ring support while making sure it is properly aligned. This will create a water tight seal between the adjustment ring support and the bottom flange of the manhole frame casting.

j. Place the manhole lid on the rim casting to lessen the possibility of debris entering the manhole.

3. Concrete Encasement Collar Installation

a. Place epoxy coated reinforcement around casting frame adequately supported to hold position during concrete placement.

b. Place concrete encasement collar in accordance with reference standards.

c. The surface of the concrete shall be finished from flush with the pavement to flush with the rim casting. The edge of the concrete shall be rounded (1/4" radius) where it meets the asphalt.

d. Fill the groove with a cold pour crack sealer. This will prevent water from entering the circular seam where the concrete collar meets the asphalt.

e. Apply a concrete curing and sealing compound to the surface of the concrete collar.

f. Protect concrete from loading & vibration until the concrete attains a compressive strength of 3,000 psi.

D. Measurement and Payment

Measurement will be made for each structure completed as specified. Payment will be made under Item 2506.602 (Concrete Encased Casting Collar) at the Contract bid price per each, which shall be compensation in full for all labor, equipment, and materials necessary to complete the work.

2506 CONNECT INTO EXISTING MANHOLE AND CATCH BASIN

SP2014-161 modified: MN/DOT 2506 is supplemented with the following:

This work consist of constructing connections into existing drainage structures in accordance with the applicable MN/DOT Standard Specifications and the following:

Connections to existing sanitary manholes shall be made with core drill hole and water tight pipe sleeve.

Measurement will be made by the number of connections constructed as specified.

Payment will be made under Item 2506.602 (Connect Into Existing MH OR CB) at the Contract bid price per each, which shall be compensation in full for all costs incidental thereto, including but not limited to, all materials and labor necessary to install proposed concrete pipe into an existing drainage structure. Any damage caused to the existing drainage structure shall be repaired at the Contractor's expense to the satisfaction of the Engineer.

2506 MANHOLE FRAME SEAL (INTERNAL/EXTERNAL)

Internal or External type manhole seals with stainless steel compression bands shall be used.

A. General

1. Work Required

An internal or external flexible rubber frame seal, and where allowed by the Engineer, a interlocking extension or extensions, meeting the requirements of this section, shall be used to seal the entire chimney section of sanitary manholes, air release manholes, clean out manholes and all other structures identified on the Contract Drawings or in the Special Provisions. The seal and extension or extensions shall extend from the frame down to the top of the cone.

2. System Description

Performance Requirements - The frame seal shall be capable of repeated vertical movement of the frame of not less than 2 inches and/or repeated horizontal movement of not less than ½ inch after installation and throughout its design life.

3. Quality Assurance

Acceptance Testing - Manhole frame seals shall be visually inspected after installation to insure that the seal is properly positioned, tight against the manhole and frame surfaces, that no voids or leakage points exist and that the bands are securely locked in place. Any seals failing this test shall be reworked as necessary and retested at no additional cost to the owner.

Any seals not passing this visual inspection may, at the Contractor's option, be tested for leakage using a method approved by the Engineer.

B. Products

An internal or external manhole frame seal, as shown on the Standard Details, with extensions where needed to cover the entire chimney area, shall be installed on all sanitary manholes air release manholes, clean out manholes and all other structures identified on the Contract Drawings or in the Special Provisions in accordance with the manufacturer's instructions.

Frame seals shall consist of a flexible rubber sleeve, interlocking extensions and stainless steel expansion bands as manufactured by Cretex Specialty Products or a pre-approved equal conforming to the following requirements.

The seal shall remain flexible throughout a 25 year design life, allowing repeated vertical movement of the frame of not less than 2 inches and/or repeated horizontal movement of not less than ½ inch. The sleeve portion of the seal shall be either double or triple pleated with a minimum unexpanded vertical height of either 8 inches or 10 inches respectively. The sleeve and extension shall have a minimum thickness of 3/16 inches and shall be made from a high quality rubber compound conforming to the applicable requirements of ASTM C-923, with a minimum 1500 psi tensile strength, a maximum 18% compression set and a hardness (durometer) of 48+5. The bands shall be integrally formed from 16 gauge stainless steel conforming to ASTM A-240, Type 304, with no welded attachments, shall have a minimum adjustment range of 2 diameter inches and a positive locking mechanism. Any screws, bolts or nuts used for this mechanism shall be stainless steel conforming to ASTM F-593 and 594, Type 304.

C. Equipment

The contractor shall have a manufacturer's recommended installation tool and all other equipment/tools necessary to install the frame seals.

D. Execution

1. Field Measurements

The Contractor shall measure the manhole to determine the information required on the manufacturer's "Sizing and Ordering" procedure. This information is needed to obtain the proper size of bands, the size and shape of the rubber sleeve and the need for and size of any extensions.

2. Surface Preparation for Seals

All sealing surfaces shall be reasonably smooth, clean, and free of any form offsets or excessive honeycomb. All loose and protruding mortar and brick that would interfere with the seal's performance shall be removed and the areas of the manhole frame, chimney and/or cone/corbel cleaned by wire brushing. All sealing surfaces shall be reasonably smooth and circular, clean and free of any loose material or excessive voids. Repair mortar, Non-Shrink Grout or Cement-Base Polymer Modified Patching and Repair Mortar shall be used to prepare a uniformly vertical 3" - 4" wide surface for the sleeve and extensions to seal against, if any adequate surface does not exist.

Detail surface preparation, including providing a vertical surface on a cone when none exists, shall be in accordance with the frame seal manufacturer's instructions.

The top portions of the cone shall have a minimum 2 inch high vertical surface. The preparation of this vertical surface when none exists shall be in accordance with the frame seal manufacturer's instructions.

3. Installation of Frame Seal

The frame seals and extensions shall be installed in accordance with the manufacturer's instructions.

3. Frame Seal Type

All manholes specified to have chimney seals located within the roadway shall have **internal** type seals. All manholes specified to have chimney seals located outside of the roadway shall have **external** style seals.

E. Measurement and Payment

All costs for furnishing and installing a frame seal and where allowed by the Engineer, an extension or extensions, shall be included in the unit price bid for manhole frame seals.

2506 MANHOLE VACUUM TESTING

A. Description

Conduct vacuum testing on manholes using vacuum testing equipment acceptable to Engineer.

Isolate manhole to be tested by plugging inlet and outlet pipes with inflatable stopper or other suitable test plugs. Securely brace plugs to avoid plugs being drawn into manhole. Plug lift holes with a non-shrink grout.

Place vacuum test equipment inside of top cone section and conduct vacuum test in accordance with manufacturer's recommendations. Operate vacuum pump until 10 in. of mercury is obtained.

Shut off vacuum pump and measure time for vacuum to drop from 10 to 9 inches of mercury. Manhole test is acceptable if the time exceeds the values in the table below:

Minimum Test Time for 48-inch Diameter Manhole			
Depth/Feet	Test Time/Seconds	Depth/Feet	Test Time/Seconds
8	20	20	50
10	25	22	55
12	30	24	59
14	35	26	64
16	40	28	69
18	45	30	74

If test fails, repair or seal manhole using non-shrink grout or other materials that are approved. Retest until an acceptable test is obtained. Test may be conducted before or after backfilling.

B. Basis of Payment

All costs for furnishing and installing the equipment, maintenance, and labor necessary to perform the testing shall be included in the unit price for Manhole Vacuum Testing where a bid item is included. Where no bid item is included, manhole vacuum testing shall be incidental.

Table 3149 – 13 Sand Cover Gradation Requirements	
Sieve Size	Percent Passing
#4 (4.75 mm)	100
#10 (2.00 mm)	95 – 100
#40 (425 µm)	0 – 50
#200 (75 µm)	0 – 8

3236 REINFORCED CONCRETE PIPE

CURRENT 12/22/14

SP2014-229: The provisions of MN/DOT 3236 are modified and/or supplemented with the following:

Manufacturers of reinforced concrete pipe may produce an alternate "offset joint" on the spigot end of the pipe. This type of offset joint is to be used with the profile or pre-lubricated pipe seal systems. See MN/DOT Standard Plate 3006.

3590 EPOXY RESIN PAVEMENT MARKINGS (FREE OF TOXIC HEAVY METALS)

NEW WRITE-UP 08/27/14

SP2014-230.3: The provisions of MN/DOT 3590.2 are hereby modified with the following:

Delete MN/DOT 3590.2.B.6, and replace with the following:

B.6 Thickness:

Apply the epoxy pavement marking with a wet film thickness of at least 20 mil [508 µm] on pavement surfaces, except apply a wet film thickness of at least 25 mil [635 µm] for SUPERPAVE wearing courses in accordance with 2360, "Plant Mixed Asphalt Pavement."

Delete MN/DOT 3590.2.C.2, and replace with the following:

C.2 Roundness:

Provide beads with a roundness of at least 80 percent.

For 20 mil [508 µm] epoxy resin pavement marking applications, apply the glass beads at a rate of at least 25 pounds per gallon [3.0 kg/L]. Apply beads at a greater rate as recommended by the material manufacturer to meet the minimum levels of retroreflectivity in accordance with 2582, "Permanent Pavement Markings." This will require contractors to consult with the material manufacturers.

The provisions of MN/DOT Specification 2572.3A8, Destroyed or Disfigured Vegetation, is amended below:

Damage to preserved trees on public property by contractors through negligence or non-compliance with the City's Standard Construction Specifications may be subject to a fine established by the Tree Inspector per the *Council of Tree and Landscape Appraisers – Guide for Plant Appraisal*. A copy of this guide is available for review in the City Engineering Office, 211 City Hall.

2573 STORM WATER MANAGEMENT

MN/DOT storm water construction details shall apply to all construction performed under this specification.

Storm water management shall be performed in accordance with the provisions of MN/DOT 2573, except as modified below:

The Contractor is required to be a co-permittee on the MPCA Stormwater for Construction Activity NPDES permit and shall be fully familiar with the current permit (www.pca.state.mn.us/water/stormwater/stormwater-c.html) and be able to comply with all conditions of the permit and the project's Storm Water Pollution Prevention Plan (SWPPP).

MN/DOT Section 1717 Air, Land, and Water Pollution and Section 2573 Storm Water Management of the MN/DOT Standard Specifications for Construction 2014 Edition shall apply except as modified below:

A. Slope Protection

On all exposed slopes 1v:3h, or steeper, temporary or permanent erosion protection must be installed within 3 days of being worked. For all other exposed slopes, temporary or permanent erosion protection must be installed within 7 days of being worked.

B. Direct Connection to an Inlet

Ditches/swales/channels that direct water from the construction site to any storm water or surface water inlet shall have the ditch bottom stabilized the same day as connection to the inlet occurs. Same day stabilization shall be done using Erosion Control Blanket (ECB) securely anchored in accordance with the manufacturer's recommendation and extended the full length of the channel and covering to full width of the bottom and both sides of the channel. The type of ECB shall be selected in accordance with MN/DOT 3885 depending on channel slope and expected velocity but must be Category 3 or better.

C. Materials Required at the Construction Site

As a spill and contingency measure a minimum of 5 Sediment Control Logs Type Rock (MN/DOT 3897) shall be always available on the jobsite in addition to absorbent pads and other materials to contain spills and prevent migration to the storm water system.

D. Construction Entrance

In addition to the MN/DOT approved materials list, Mudmat® Reusable Matting shall also be considered an acceptable construction entrance (minimum length of 45 feet). Maintenance of either Mudmat or Stone Construction Entrance is required to prevent tracking offsite.

2573 STORM WATER MANAGEMENT

REVISED 02/04/14

SP2014-216.1: MN/DOT 2573 is modified as follows:

Delete MN/DOT 2573.3.K, "Construction Exit Controls," and substitute the following:

K Construction Exit Controls

Exit Controls should be selected from the following list of stabilized construction exits:

- (1) Slash mulch,
- (2) Crushed rock,
- (3) Sheet pads, and
- (4) Rumble pad.

Provide a wheel wash off system in addition to stabilized exit controls when project site conditions warrant or when called out in plans.

Use construction exit control BMPs at exit locations to minimize vehicle tracking of sediment from the project onto paved surfaces. Install BMPs during the initial phase of the project.

Select construction exit BMP based on project site conditions, soil type, vehicle size, time of year, and duration of use. Use materials generated by the project as construction exit controls whenever possible. Maintain exit controls during the project.

Clean paved streets at the end of each working day, or more frequently as necessary to provide safety to the traveling public.

Delete MN/DOT 2573.4.N, "Construction Exit Controls," and substitute the following:

N Construction Exit Controls

The Engineer will measure construction exit controls by the lump sum including the cost of protecting each exit over the life of the contract regardless of types or quantities for stabilized construction exits.

The Engineer will measure wheel wash off exit controls by each system installed and maintained thru the life of the contract.

The Unit of measure for Item 2573.501 (Bale Barrier) is changed to "linear foot [meter]".

Item 2573.533 is changed to "Sediment Control Log" by the linear foot [meter].

The following is added to MN/DOT 2573.5:

J Unit Prices

The Department will pay the following unit prices for temporary sediment control items in the absence of a Contract bid price:

Bale Barrier	\$4.10 /foot (\$13.45/meter)
Silt Fence, HI	\$3.00/ foot (\$10/meter)
Silt Fence, Type MS.....	\$2.00/ foot (\$6.50/meter)
Silt Fence, Type SD.....	\$2.00/ foot (\$6.50/meter)
Sandbag Barrier	\$6.00 square foot (\$64.68/ sq meter)
Flotation Silt Curtain, Type: Still Water, 1.2 m (4 foot) depth	\$12.50 /foot (\$41.00/meter)
Sediment Trap Excavation	\$5.50/cubic yard (\$7.20/cubic meter)
Bituminous Lined Flume.....	\$50.00/square yard (\$59.52/square meter)
Sediment Removal, Backhoe	\$175.00/ hour
Sediment Removal, Vacuum truck	\$175.00 /hour
Sediment Control Log, Type Wood Fiber	\$4.00/foot (\$13.00/meter)
Sediment Control Log, Type Rock.....	\$5.00/foot (\$16.50/meter)
Flocculant Sock	\$200 each

2573 EROSION CONTROL SUPERVISOR

Section 2573.5H is deleted and replaced by the following:

H Erosion Control Supervisor

Providing the Erosion Control Supervisor for this Contract shall be considered incidental work for which no direct payment will be made.

2574 SOIL PREPARATION

REVISED 02/04/14

SP2014-216.2: MN/DOT 2574 is modified as follows:

Item 2574.550 is changed to "Compost, Grade ____" by the cubic yard [cubic meter].

The following is added to MN/DOT 2574.5:

C Unit Prices

The Department will pay the following unit prices for Soil preparation I items in the absence of a Contract bid price:

Subsoiling.....	\$350.00 /acre (\$853.65/hectare)
Soil Bed Preparation	\$200.00/ acre (\$487.87/hectare)
Soil Tracking.....	\$134.00 /acre (\$326.83/hectare)

2575 ESTABLISHING TURF AND CONTROLLING EROSION

REVISED 04/11/14

SP2014-216.3: MN/DOT 2575 is modified as follows:

Delete MN/DOT 2575.4A "Seeding", and substitute the following:

A Seeding

Seeding will be measured by the area seeded, regardless of the seed mixture or quantity of seed used, and regardless of whether the seed was furnished by the Contractor or the Department. Areas reseeded by order of the Engineer, after the original seeding of the area was accepted, will be measured and added to the area originally seeded.

Delete 2575.4B "seed" and substitute the following:

B Seed

The Engineer will measure seed by PLS mass of each mixture or species placed.

The second paragraph of MN/DOT 2575.4.J is hereby deleted and replaced with the following:

The Engineer will measure Method 3 rapid stabilization will be measured by the M gallon [cubic meter] of slurry furnished and acceptably placed. Minimum measure is ½ acre [0.2 ha] and in 1/6 acre [0.07 ha] increments per area measured.

Item 2575.512 "Mulch Material, Type ____" is changed to Item 2575.513 "Mulch Material, Type ____".

Item 2575.570 is changed to "Rapid Stabilization Method ____" by the acre [hectare]

The following is added to MN/DOT 2575.5:

M Unit Prices

The Department will pay the following unit prices for temporary erosion control items in the absence of a Contract bid price:

Disc anchoring	\$45.00/ acre (\$110.00/ hectare)
Temporary Seed Mixtures	
21-111, 21-112 or 21-113	\$1.25/ pound (\$2.50 /kilogram)
22-111	\$2.00 /pound (\$4.44/ kilogram)
Erosion Control Blanket	
Category 3(wood fiber)	\$1.50/square yard (\$1.78/ square meter)
Category 4.....	\$1.60/square yard (\$1.90/ square meter)
Rapid Stabilization	
Method 1	\$465.00/acre (\$1162.5/hectare)
Method 2	\$800.00/acre (\$1976.75/hectare)
Method 3	\$566.00/M gallon (\$149.5/cubic meter)
Method 4	\$1.84/sq yd (\$2.20/square meter)
Hydraulic Matrix, Type mulch	\$1.50/lb (\$3.33/kilogram)
Hydraulic Matrix, Type Fiber Reinforced	\$2.00/lb (\$4.4/kilogram)
Water	\$2.00/M gallon (\$0.53/cubic meter)
Mowing	\$50.00/ acre (\$125.00/hectare)
Weed Spraying	\$162.00 /acre (\$405.00/hectare)

2575 TURF ESTABLISHMENT

Turf establishment shall be performed in accordance with the provisions of MN/DOT 2575, except as modified below:

- A. Lawn type sod shall be placed on all disturbed turf areas in well established lawns and around all culvert ends and storm sewer inlets and outlets as directed by the Engineer.
- B. Where the new sod meets the existing, a sod cutter shall be used to make the new sod level with the existing and to eliminate the ragged appearance of the existing sod caused by excavation.
- C. Areas of disturbed soil located on private property will be topsoiled and sodded immediately after the underlying work is completed. No additional compensation will be made for this early sodding.

- D. Topsoil salvage material shall be placed to a thickness of 4 inches on all disturbed turf areas to be sodded and seeded in accordance with the provisions of MN/DOT 2105. Where the salvage topsoil material found on site is inadequate, topsoil borrow shall be provided in turf establishment areas in accordance with the provisions of MN/DOT 2574.
- E. Turf establishment on disturbed turf areas not designated for sodding shall consist of seeding, fertilizing and mulching. Unless otherwise provided in the Plans, turf establishment by seeding shall include:
 - 1. Seed, Mixture No. 25-151 (High Maintenance Turf) as specified in MN/DOT 3876, shall be applied at the rate of 120 pounds per acre.
 - 2. Fertilizer, Type 3, (analysis 22-5-10) as specified in MN/DOT 3881 shall be applied at the rate of 350 pounds per acre.
 - 3. Hydraulic Matrix, Type FRM as specified in MN/DOT 3884 shall be applied at the rate of 3,900 pounds per acre.
- F.
- G. Seed shall be placed with a hydroseeder, unless otherwise approved by the Engineer.
- H. Final acceptance of turf establishment will not be made until area restored has a satisfactory stand of grass established. Project payment retainage will be held until final acceptance of turf establishment.
 - I. Payment for sodding at the contract price per square yard shall include importing or salvaging and placing 4 inches of topsoil, shaping, or otherwise preparing the ground, cutting as required, furnishing, laying the sod on the areas designated to be covered, and pressing the sod into the underlying soil by rolling or tamping, and staking or stapling as necessary for sloped areas.
 - J. Payment for turf establishment shall include importing or salvaging and placing 4-inches of topsoil, shaping, or otherwise preparing the ground, seeding, fertilizing and hydromulching the disturbed turf areas not designated for sodding. Final acceptance of turf establishment will not be made until the area restored has a satisfactory stand of grass established. A satisfactory stand of grass shall be defined as a consistent root of growth 3-inches or more. Root growth shall be determined on a random sample basis of plugs taken by the engineer when the contractor determines that the root growth has been obtained. Turf will not be accepted until the minimum root growth has been obtained.
- .
- K. Upon expiration of the sod maintenance period on individual areas or sections of the Project, the Engineer will make an inspection of the work and will accept all sod that is in normal, healthy growing condition. No payment will be made for sod that is not in acceptable condition at the time of the final inspection an amount will be deducted from any moneys due or that may become due the Contractor equal to 100 percent of the Contract bid price per unit of measure of unacceptable sod. Sod that is within 3 m (10 feet) of the shoulder or is directly abutting a roadway surface that is acceptably maintained, but dies out due to salt or winter maintenance activities

Pre-Bid Meeting Agenda
July 23rd, 2015 @ 11:00 a.m.

GARY NEW DULUTH RECREATION CENTER

Attendance Sheet

1. Everyone must sign the sign-in sheet. Make sure to write clearly and write down what Work Scope(s) you are bidding along with your contact information.

Project Team

1. Owner – City of Duluth – Property and Facilities Management
 - a. Erik Birkeland – Property and Facilities Manager
 - b. Rob Hurd – Project Construction Coordinator
2. User Group – GND Development Alliance
 - a. Mark Boben – Chairman
3. Construction Manager – Kraus-Anderson[®] Construction Company:
 - a. Greg Schendel – Project Manager.
 - b. Deb Coffman – Project Assistant.
4. Design Team – SAS + Associates
 - a. Luke Sydow – Landscape Architect

Project Description

1. Phase #1 -This project consists of all work on west side of 101st Avenue West.
2. Sitework, grading and storm drainage system with retention pond.
3. Construction of two soccer fields.
4. Asphalt and paver parking lot.
5. Concrete curbs and walks.
6. Plaza with pavers and shelter.
7. Chain link site fencing.
8. Sod, seed and site plantings.
9. Irrigation system for soccer fields.
10. Site Lighting

Work Scope Overview

1. There are a total of 10 Work Scopes for bidders to submit their bids on. The below table is a representation of the different work scopes and the specification sections associated with each.

Gary New Duluth Community Center & Recreation Area Improvements					
00 2400 Work Scope Index					
Note: All work described is furnish and install unless noted otherwise.					
PC (Work by Prime Contractors)					
Work Scope No.	Work Scope Description	Work By	Spec Sections Included		Remarks
			Spec #	Spec Section	
		PC			
10.A	Protective Covers	PC	03100 03200 03250 03300 107300	Formwork Reinforcing Steel Concrete Accessories Cast-In-Place Concrete Protective Covers	Complete Complete Complete Complete Complete
26.A	Electrical Site Lighting	PC	260000 261000	Exterior Lighting Lighting Requirements	Complete Complete
31.A	Site Clearing, Earthwork and Subdrainage Package	PC	02100 02110 02210 02315 02620	Site Preparation Site Clearing Finish Grading Excavation and Backfill Subdrainage Erosion & Sedimentation Controls (SWPPP)	Complete Complete Complete Complete Complete Complete
32.A	Asphalt Paving	PC	02210 02315 02512	Finish Grading Excavation and Backfill Bituminous Paving	As it Applies As it Applies Complete
32.B	Concrete Paving	PC	02210 02315 02520	Finish Grading Excavation and Backfill Concrete Flatwork, Paving and Curbs	As it Applies As it Applies As it Applies
32.C	Chain Link Fencing	PC	02830	Chain Link Fencing	Complete
32.D	Permeable Paver Package	PC	02210 02315 02515	Finish Grading Excavation and Backfill Permeable Pavers	As it Applies As it Applies Complete
32.E	Irrigation Package	PC	02210 02810	Grading Irrigation System	As it Applies Complete
32.F	Landscape Package	PC	02210 02315 02930 02932 02934	Finish Grading Excavation and Backfill Plant Materials Seeding Sodding	As it Applies As it Applies Complete Complete Complete
33.A	Site Utility Package	PC	02110 02315	Site Clearing Excavation and Fill Storm Drainage Utilities	As it Applies As it Applies Complete

Refer to KA Special Requirements Section 00 2420 for Work Scope Descriptions, KA General Requirements Section 00 2410, and the Specification Sections you will be responsible for bidding.

Bidding Requirements

- Kraus-Anderson Subcontractor Bid Form:
 - Bid Form – Section 00 4100
 - Bid Security – 5%.
- Bid Due Date – August 4th, 2015 @ 2:00 p.m. at City of Duluth Purchasing Room 100.
 - Hard copy – Sealed bids delivered to the below address:
City of Duluth – City Hall Purchasing Room #100
411 West 1st Street
Duluth, MN 55802
- Bidder's questions are due to Kraus-Anderson Construction Company by 5:00 p.m. on Tuesday, July 28th 2015.
 - Email questions to greg.schendel@krausanderson.com

Preliminary Schedule

1. Rough grading, sub-drainage and sand backfill for soccer fields - Fall 2015
2. Final Completion - July 1, 2016

Other Issues

1. City Project – City Requirements.
2. Bidding Document Location.
3. Addenda out after July 28, 2015
4. Site Utilities – Storm Drainage Spec. - City of Construction Standards – City providing RCP
5. Contract Documents applicable to this project will be issued in addendum.

Questions & Closing Comments

1. Work Under Progress: Completion of recreation center building.
2. Future Work: Dog Park, Community Garden, Skate Park.
3. Bidder questions.
4. Site visit / additional tours.



PRE-BID MEETING SIGN-IN SHEET
Gary New Duluth Community Center & Recreation Area Improvements

July 23rd, 2015

	Name	Company	Address	Phone Number	Fax Number	E-Mail Address	Work Scope(s)
1	Robert Hurd	City of Duluth		626-5730		rhurd@duluthmn.gov	
2	Nate Horner	Century Fence	PO Box 277 Forestlake, MN 9211 Hwy 53	612-670-3520	651-464-7377	Nhorner@Centuryfence.com	Fence
✓ 3	Burny Tibbetts	KGM Contractors	Angora, MN	218 204-0311	218 666-5708	burny@kgmcontractors.com	
✓ 4	Bill Nelson	RJS Construction group	Superior, WI	218-348-0638		BNelson@RJSCompanies.com	
5	Denny Johnson	PARSONS ELECTRIC	4615 GRAND AVE, DULUTH 55807	(218) 727-2691		DENNY.JOHNSON@PARSONS CORP.COM	
✓ 6	Andy Dammer	Veit	1100 W. Gary St	218-626-2242	218-626-1009	ADammer@veitusa.com	
✓ 7	Daniel Johnson	Daniel Johnson EX	5716 Rice Lake Rd	218 721-4102		DDJ1268@gmail.com	
8	Nathan Sapik	Benson Electric Co	1102 N. 3 rd St. Superior, WI 54880	715-394-5547		nate@beco.com	Electrical
9	LUKE SYDOW	SAS+ASSOC	219 W. FIRST ST	218 391-1335		LUKE@SASLANDARCH.COM	DESIGNER
10	GREG SCHENDEL	KRAUS ANDERSON	3716 ONIOTA Street Duluth MN.	218 343-7844		GREG.SCHENDEL@KRAUSANDERSON.COM	CM

Gary New Duluth Community Center BIDDER QUESTIONS & ANSWERS

We are looking for clarification on the below items regarding the Gary New Duluth Community Center.

-Please clarify that no bid, or performance / payment bonding is required?

You will have to meet the city of Duluth's requirements for bonding

-How do we obtain minutes from the pre bid meeting?

Any clarifications required will be provided by addendum. A bidders list will be posted on the City of Duluth's website

-Work scope description for 32-F lists Irrigation and Landscape Package but is not it two separate packages?

Yes

-Are we to include sales tax on our materials in our lump sum bid?

Not known, but if it is required by the City, then you are to include it

-Bid is lump sum but nowhere does it give clear limits of seed and sod quantities so how are we to know what to include in our bid? Please differentiate on the plan what is to be sodded and what is to be seeded with what seed mix.

All disturbed areas are to be sodded.

-Planting specification states that we are to include a one year warranty on the plants. This specification also states that the contractor is to perform weeding and watering until substantial completion. Please confirm substantial completion for the purpose of this section is defined as 6/15/16 as per Section 01 3210 and that after substantial completion the project owner will be performing weeding and watering.

Substantial completion is the date of acceptance. Contractor will be responsible for weeding and watering until the project acceptance. Contractor may complete the project prior to 6/15/2016. The one year warranty will start at the time of owner acceptance.

-The planting specifications state that replacement plants shall be warrantied. What is the duration of said warranty? Could this arrangement go on for perpetuity if a replacement plant fails again and again?

1 year from acceptance

-Planting notes and specs conflict. Are we to bid with weed barrier fabric under the tree mulch or only the shrub mulch?

Shrub mulch only

-Please clarify that bid package 31.A is responsible for any necessary temporary seeding and installation and removal of all erosion control.

Yes

-Please clarify that notes 6 and 17 on LA1.2 are intended for bid package 31.A. Also please clarify that bid package 31.A is responsible for F&I of all proper soils in all areas to +/- 1/10' and that 32-F is only responsible for amending soils at our tree and shrub planting areas. Excavation contractors can F&I topsoil better and cheaper than landscape contractors. To require 32-F to be responsible for amending or tilling topsoil under seed and sod areas on the site would be inconsistent with industry practice.

32F is responsible for tilling, amending, seeding or sodding as necessary to meet the specifications after the 31A topsoil is placed.

-Detail 4 on LA1.2 talks of rain garden mulch and plantings. Please provide plant list and SF if we are to include in our bid.

Rain Garden will receive shredded hardwood mulch. Perennials will be added by owner.

-Seeding specifications state that 32-F is responsible for maintaining and spraying the seeded areas until 'final acceptance of landscaping work'. Is this when all initial installation work is completed or is this at the end of the warranty period. Cost will be high if we are to mow the seeded areas for 1 year.

The date of acceptance is not the warranty date. Acceptance is when the seed is successfully established.

However, all disturbed areas are to receive sod.

-Sod spec says sod shall be WI grown. Will other states be acceptable?

Northern MN or Northern WI is preferred

Approved Substitutes:

Pavers – Borgert, Style, FiltraPave with

Shelter RCP, Model Number, AS-GLZ40-08 with modifications for electrical

From: SAS+Associates [<mailto:mail@saslandarch.com>]
Sent: Thursday, July 30, 2015 2:38 PM
To: nhorner@centuryfence.com
Cc: Mark Boben; Schendel, Greg
Subject: GND Chain Link Fence

Hello Nathan, per your email, here are our responses for the chain link fence at the Gary New Duluth Community Center

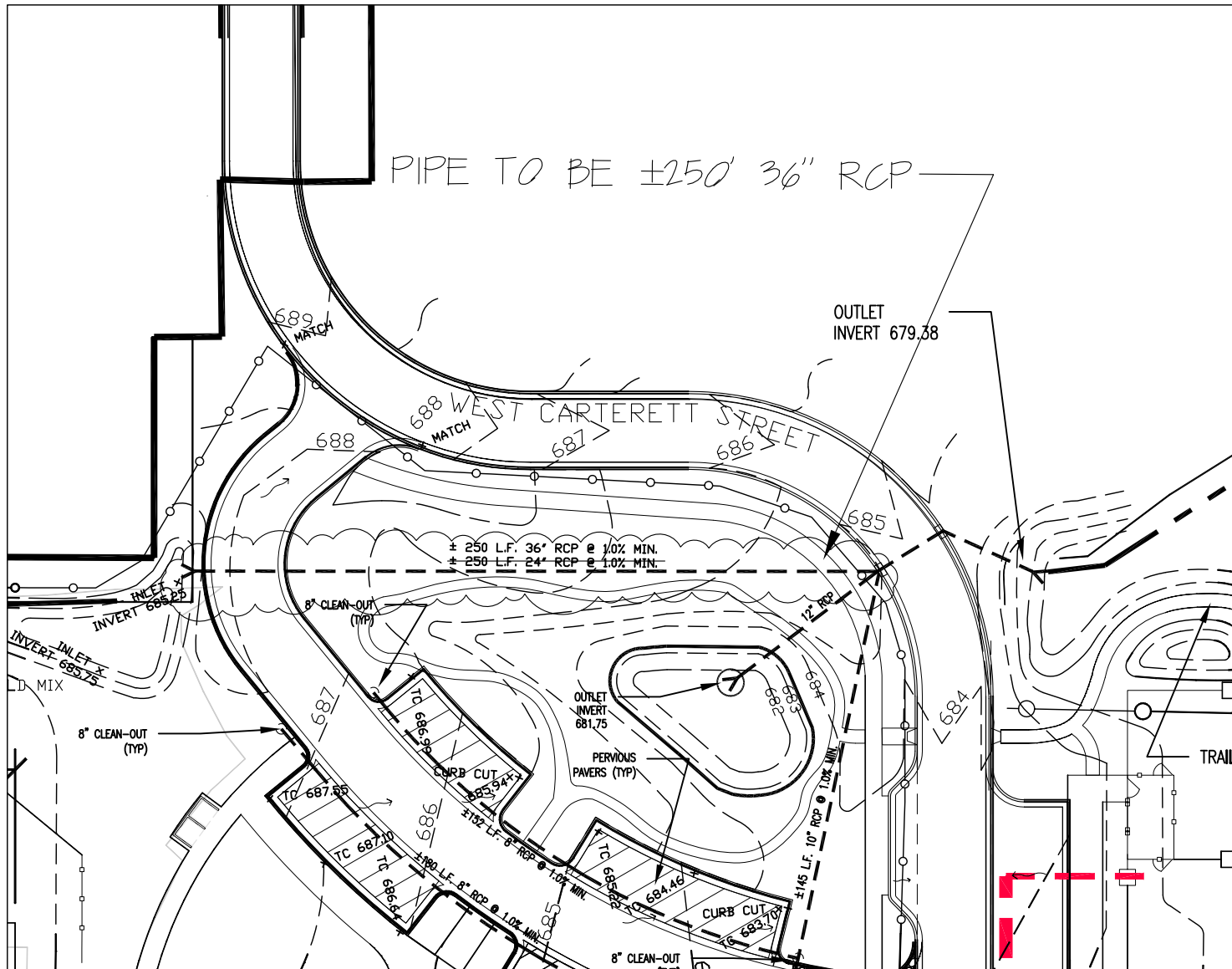
All chain link fence fabric to be 2", 9 gauge mesh
The chain link fence IS NOT to receive PVC coating
Brace/truss assemblies are to be used on both the 4' and 6' height fences

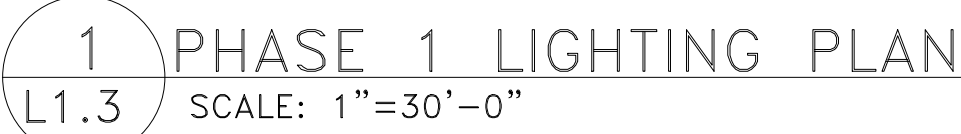
Please feel free to contact us with any further questions.

Thank you
Eric Johnson

:::: WE HAVE MOVED ::::

SAS+Associates
219 West First Street, Suite 350
Duluth, MN 55802
P 218.391.1335
F 218.722.6697
mail@saslandarch.com
saslandarch.com



[illegible]


F1000 FIXTURES MUST BE THE FOLLOWING:													
Filename: P:\SAS\049\ALD\TG.AC1													
Qty	Symbol	Label	Description	Date/6/30/2015	Arrangement	LLF	LLD	LLD	Dim. Watts	Dim. Lumens	BUG Rating		
1	H		LEDTYPE AR13-6M-MW-3-EB-700/HAPCO 14' ALUM POLE		SINGLE	0.855	0.950	0.900	52	5451	BL-UQ-G1		
1	L		LEDTYPE AR13-18M-MW-NW-4-EB-700/HAPCO 25' ALUM POLE		SINGLE	0.855	0.950	0.900	165.85	16018	B3-UQ-G2		
1	M		LEDTYPE AR13-18M-MW-NW-5-EB-700/HAPCO 25' ALUM POLE		SINGLE	0.855	0.950	0.900	165.31	16068	B4-UQ-G2		
3	W		LEDTYPE ND2-24H-MW-NS-U-MS (Ceiling Mount Canister)		SINGLE	0.855	0.950	0.900	57.9	4975	BL-UQ-G1		

DISCLAIMER

This lighting plan specifies luminaires supplied by ALED. NO SUBSTITUTIONS ALLOWED. Any deviation from this plan or use of luminaires other than ALED products will require full submittal of fixture sample, drawings, and lighting plan to city, engineer and landscape architect for prior approval.

These calculations are NOT valid for owner or city approval using any "non-ALED represented product" or fixtures not shown on this plan. Fixtures must be provided by ALED.

These lighting calculations are not a substitute for independent engineering analysis by a professional engineer.



ARIETA™™ LED Area Luminare

AR13

Motion Sensor (Optional) Specifications

Description
 Detection infrared luminare integrated outdoor
 occupancy sensor provides light level control based
 on motion detection. Initial setup and subsequent sensor
 measurements are made using handheld configuration
 tool. POA option is required for On/Off control using light
 detection.

Operation
 Standard factory setting will dim the luminare to 50%
 when motion is sensed and then to power to 100%
 when motion is not detected for five minutes. The
 luminare will then dim to 50%. Range and fade time
 are adjustable, but initially set to NCN2L. The
 luminare will dim over time (factory set) field adjusted
 as required using FSR-100 configuration tool. FSR-100
 user guide available at www.ledlighting.com

Optical System

Multi-cut, multi-beam fresnel lens with a 360 degree view
 (specify uniformed sector motion within one mounting height
 up to 200 maximum (standard). Conspicuity factor for higher
 mounting heights required.

Finish

Senior exterior ring and lens are white polycarbonates, UV
 and impact resistant.

Listing/Testing

UL listed, ETL and cUL listed, IP66 rated and CE
 certified.

Warranty

5-year limited warranty on luminaires and components
 with a motion sensor.

Motion Sensor (Optional) Data

L3 Lens Dimensions

L3 Lens Coverage Top View

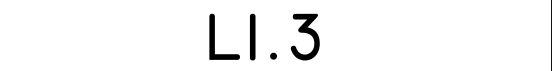
L3 Lens Coverage Side View

L7 Lens Dimensions

L7 Lens Coverage Top View

L7 Lens Coverage Side View

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 AR13, AR13-01301. Specifications subject to change without notice



Poligon Product Specification Form

by **PORTERcorp**
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www.poligon.com 800-354-7721

PROJECT NAME: _____

PROJECT LOCATION: _____

CUSTOMER NAME: _____

E-MAIL: _____

COMPANY: _____

ADDRESS: _____

ADDRESS 2: _____

CITY: _____

STATE: _____ ZIP: _____

PHONE: _____ FAX: _____

WIND LOAD: _____ SNOW LOAD: _____

SEISMIC DESIGN: _____ BLDG CODE: _____

Shelter Options

SELECT APPLICABLE ROOF TYPE:

- ☐ MR (Metal Roof)
- ☐ SPMR (Structural Panel under Metal Roof)
- ☐ TGMR (Tongue & Groove under Metal Roof)
- ☐ SS (Standing Seam Roof)
- ☒ SPSS (Structural Panel under Standing Seam)
- ☐ TGSS (Tongue & Groove under Standing Seam)
- ☐ SPAS (Structural Panel under Asphalt Shingles)
- ☐ SPCS (Structural Panel under Cedar Shingles)
- ☐ SPCH (Structural Panel under Milled Cedar Shingles)
- ☐ TGAS (Tongue & Groove under Asphalt Shingles)
- ☐ TGCS (Tongue & Groove under Cedar Shingles)
- ☐ TGCH (Tongue & Groove under Milled Cedar Shingles)
- ☐ LATIA (Santa Fe metal stick style)
- ☐ TRELIS

FRAME COLOR: _____

ROOF COLOR: _____

SELECT MODIFICATIONS TO A STANDARD:

- ☐ INCREASE UPB HEIGHT: _____
- ☒ ADD ELECTRICAL CUTOUTS: _____
- ☐ ADD CUPOLA: _____
- ☐ ADD ORNAMENTATION: _____
- ☐ ADD BENCHES: _____
- ☐ ADD HANDRAILS: _____

SELECT CUSTOMIZATION:

- ☐ INCREASE UPB MORE THAN 2': _____
- ☐ CUSTOM COLUMNS: _____
- ☐ CUSTOM PITCH: _____
- ☐ ADD E-COATING FRAME: _____
- ☐ ADD GALVANIZING FRAME: _____



Oxford Standard Sizes

BIN	SIZE
GXO	24
GXO	28
GXO	32
GXO	40
GXO	48
GXO	58
GXO	64
GXO	76

Sheet Index

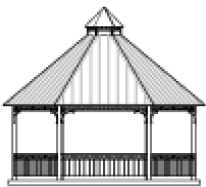
COVER SHEET / ORDER FORM
ELEVATION VIEWS
STRUCTURAL FRAME
ANCHOR LAYOUT

Refer to www.poligon.com download area for:

- FOOTING AND ANCHOR INFORMATION
- COLUMN STYLE OPTIONS
- CUPOLA OPTIONS
- ORNAMENTATION STYLE OPTIONS
- INTEGRATED BENCH OPTIONS
- MISCELLANEOUS OPTIONS
- COLOR CHARTS

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SHELTER MODEL: OXFORD GXO2		
SCALE: 1:80	REV LEVEL: A	DATE: 1/27/2011



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SHEET
COVER SHEET

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- SEE FINISHES / ROOFING PAGE FOR:
- FRAME FINISH OPTIONS
 - POWDER COAT AND ROOFING COLOR SELECTION
 - TONGUE & GROOVE, STRUCTURAL INSULATED PANEL AND METAL ROOF OPTIONS
 - OTHER ROOFING OPTIONS

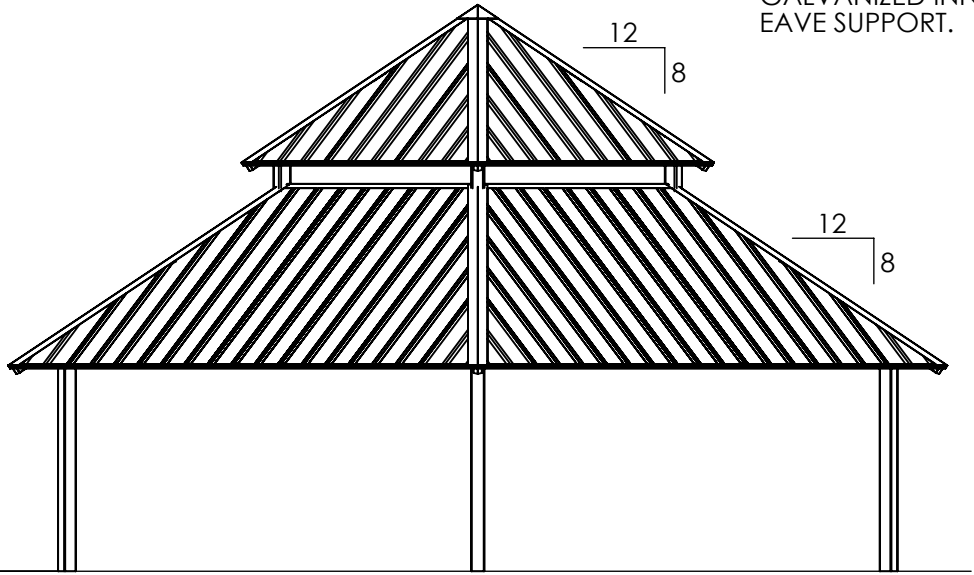
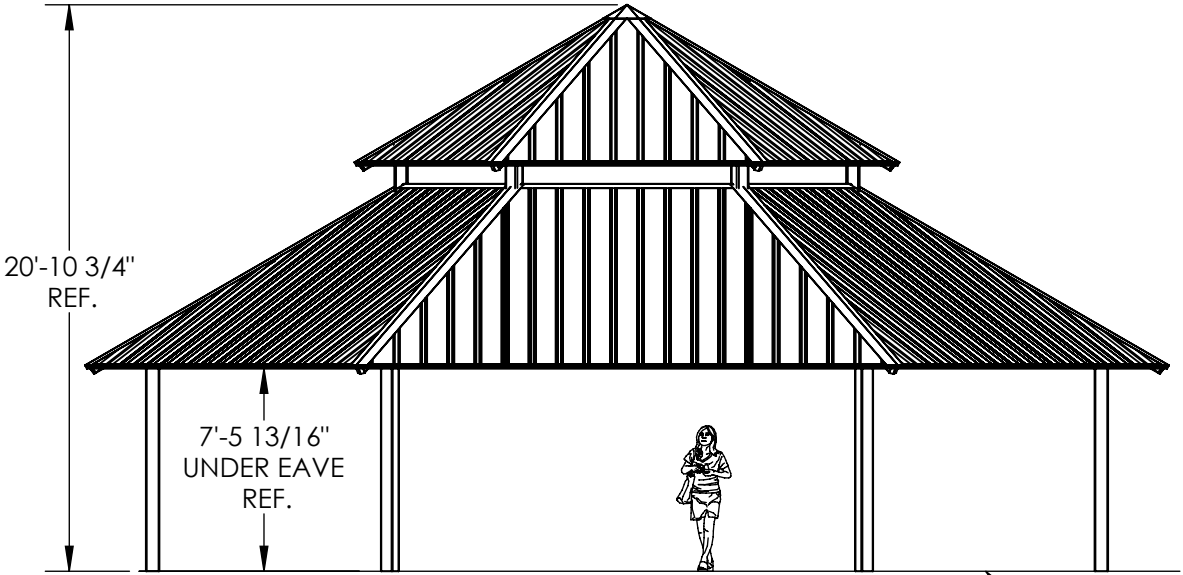
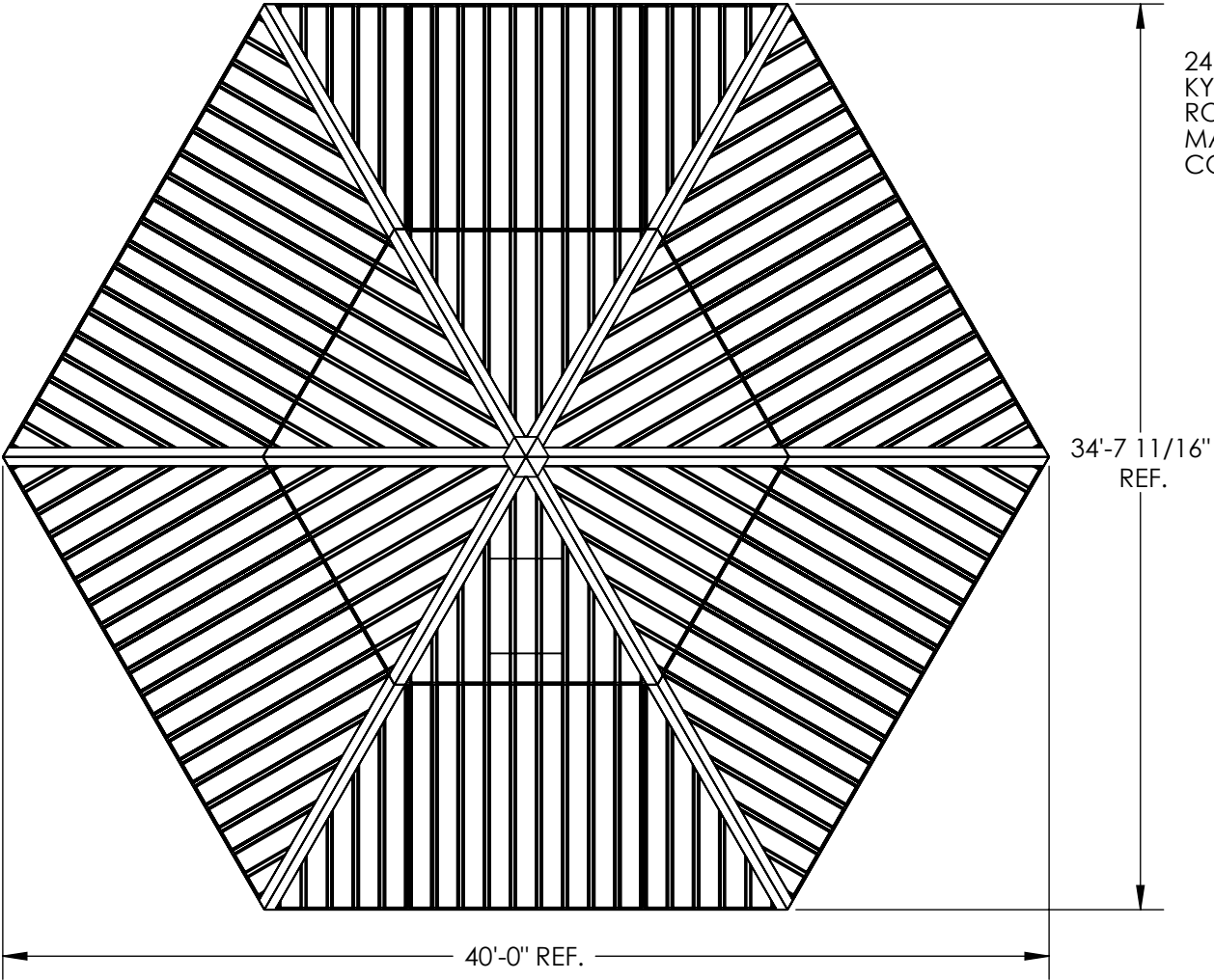
- SEE ORNAMENTATION PAGE FOR:
- ORNAMENTATION PATTERNS
 - RAILING PATTERNS
 - COLUMN OPTIONS
 - CUPOLA OPTIONS

THIS BUILDING PROVIDES 1039 SQ. FT. OF SHADE.

24 GA., GALVALUME COATED, KYNAR 500 PAINTED, STEEL ROOFING PANELS. SEE COLOR MATRIX FOR AVAILABLE COLORS.



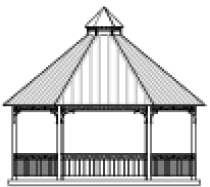
ROOFING TRIM IS 24 GA. KYNAR 500 COATED STEEL, COLOR MATCHED TO ROOF. EAVE CHANNEL TRIM IS REINFORCED WITH 18 GA. GALVANIZED INNER CHANNEL FOR ADDITIONAL EAVE SUPPORT.



FINISH GRADE

SHELTER MODEL:
OXFORD 40
GX02-40

SCALE: 1:36	REV LEVEL: A	DATE: 1/27/2011
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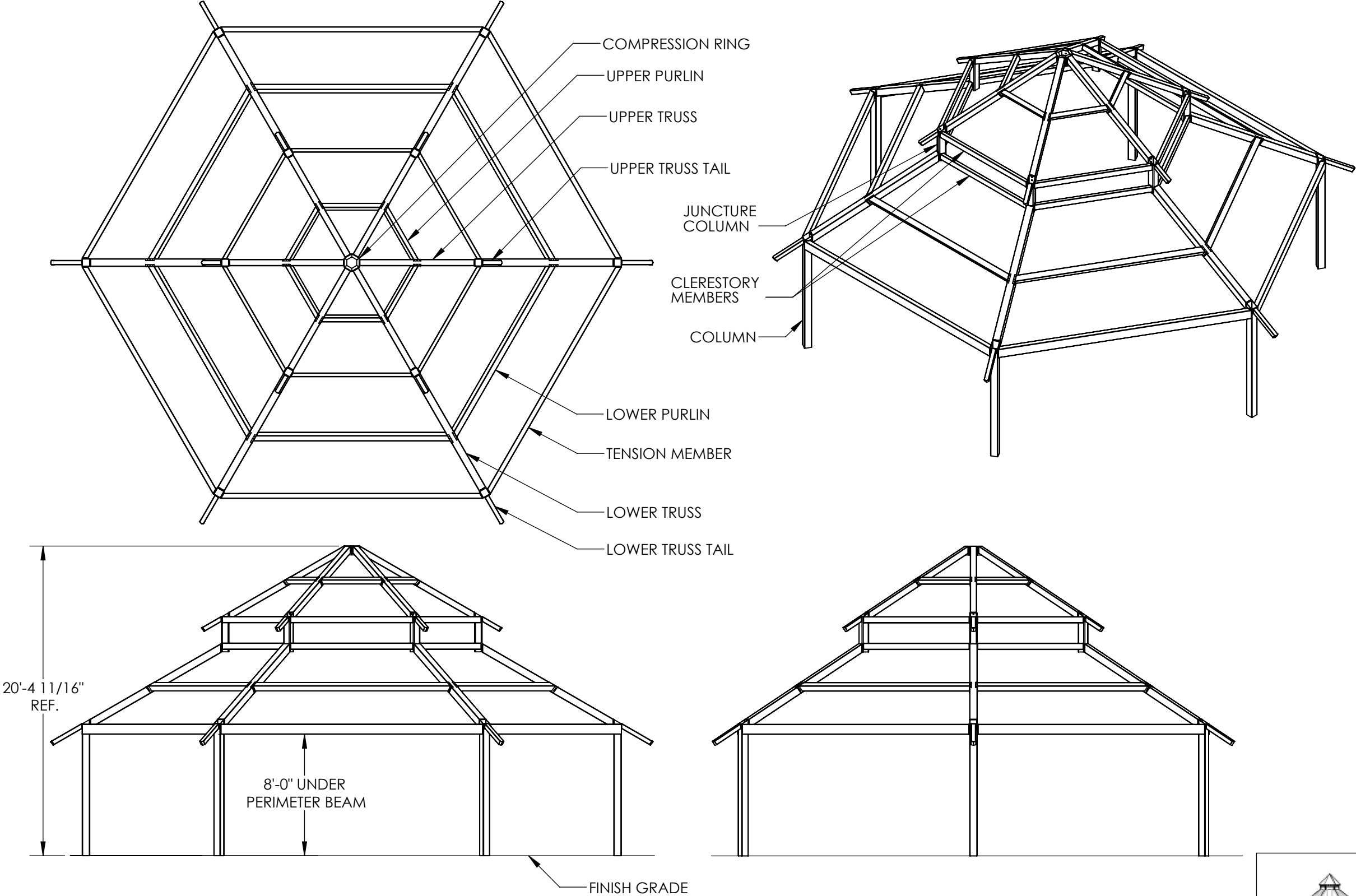
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SHEET
ELEVATION VIEWS

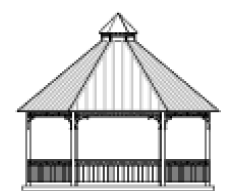
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FRAME AND ORNAMENTATION FINISH:
MEMBERS SHOT BLASTED TO NEAR WHITE CONDITION (SSPC SP-10), WASHED AND SEALED IN A PHOSPHATE SPRAY, COATED WITH SUPER DURABLE TGIC POLYESTER POWDER AND OVEN CURED.

SEE COLOR MATRIX FOR AVAILABLE COLORS.

OPTIONAL UNDERCOAT:
EPOXY E-COAT SYSTEM, USING FULL IMMERSION ELECTRO-DEPOSITION PROCESS.



PARK ARCHITECTURE

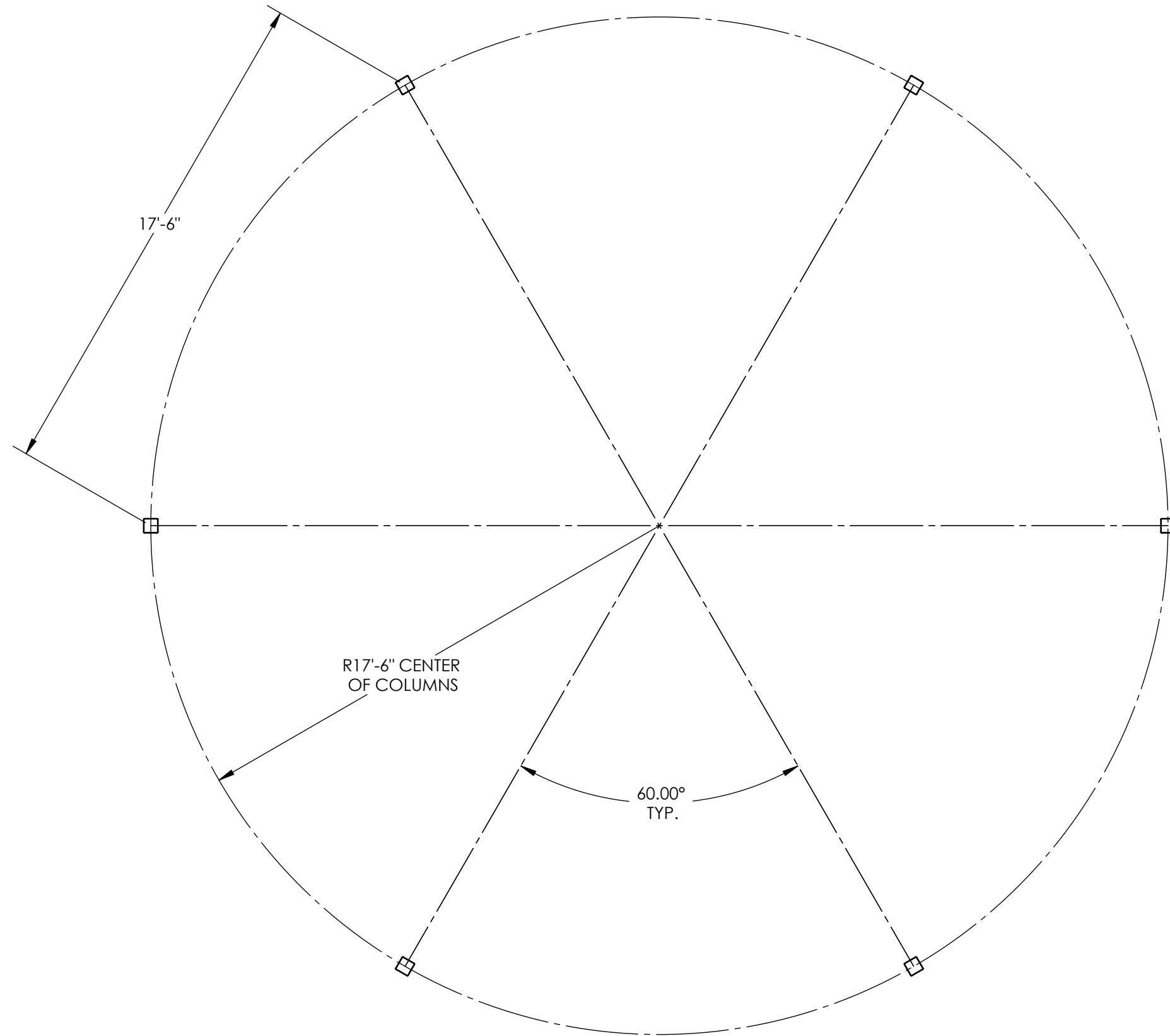
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SHEET

FRAME VIEWS



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REFER TO ANCHOR AND FOOTING DOWNLOAD SHEETS FOR GENERAL INFORMATION ON BOTH ANCHOR ATTACHMENT AND TYPICAL FOOTING TYPES. ANCHOR ATTACHMENT AND FOOTING DESIGNS ARE SITE AND SITUATION SPECIFIC AND ARE INTEGRAL TO THE FINAL SHELTER DESIGN.

DO NOT POUR FOOTING OR INSTALL ANCHOR BOLTS WITHOUT JOB SPECIFIC ANCHOR AND FOOTING DESIGN DRAWINGS.

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GXO2-40

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PARK ARCHITECTURE

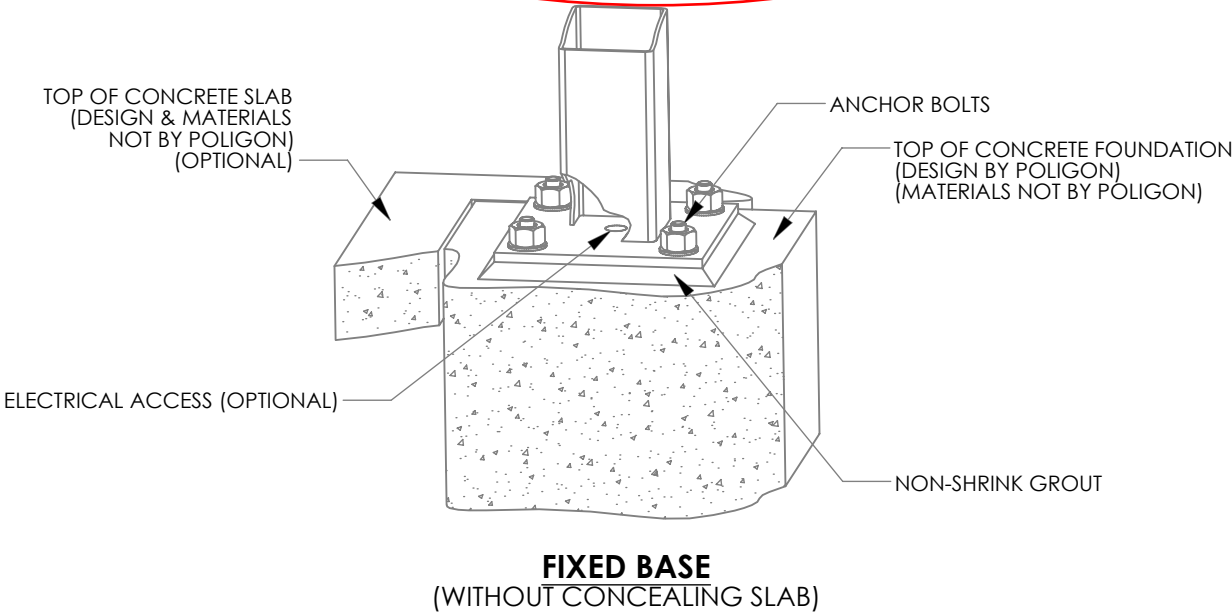
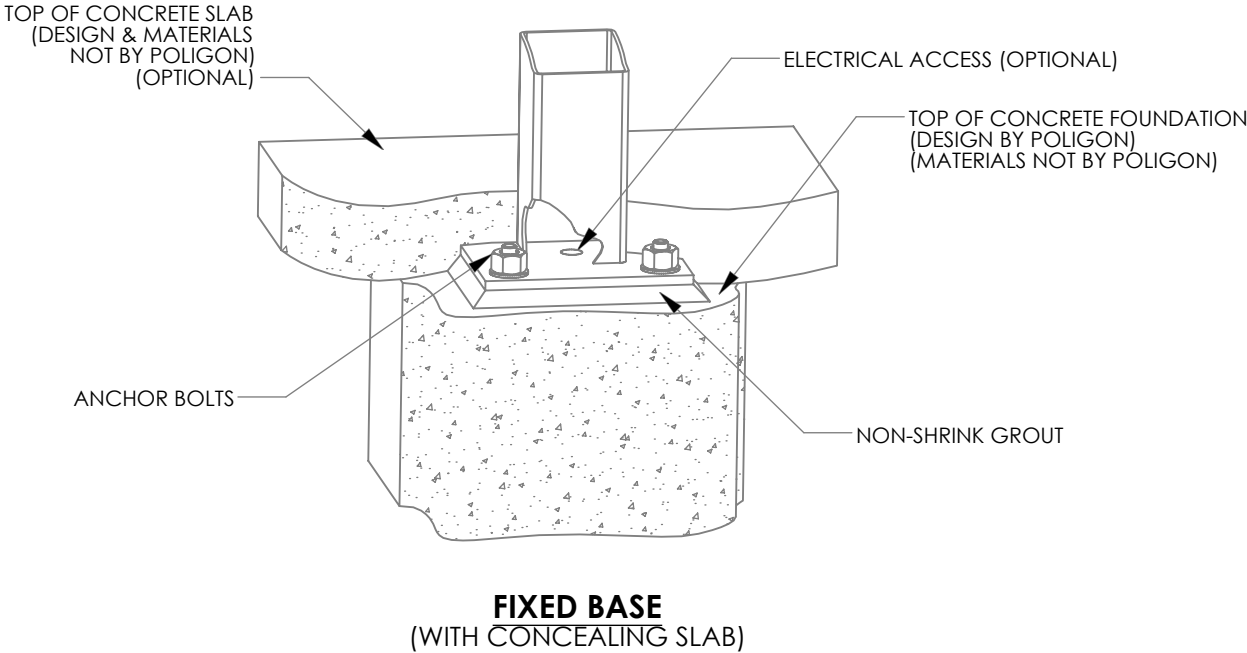
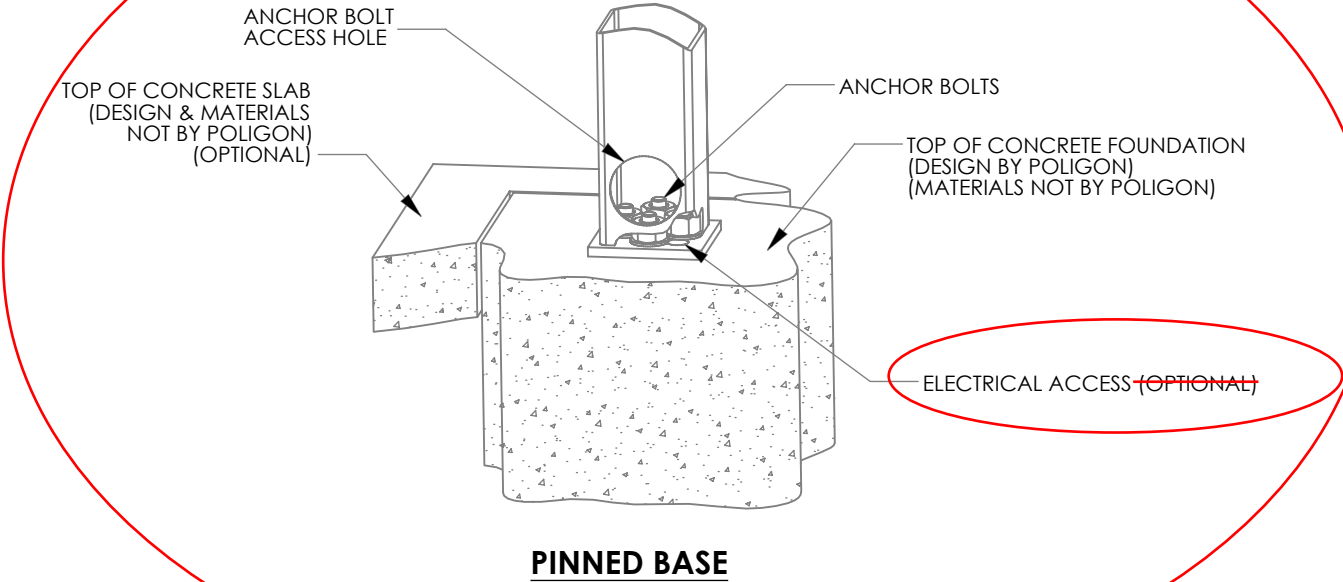
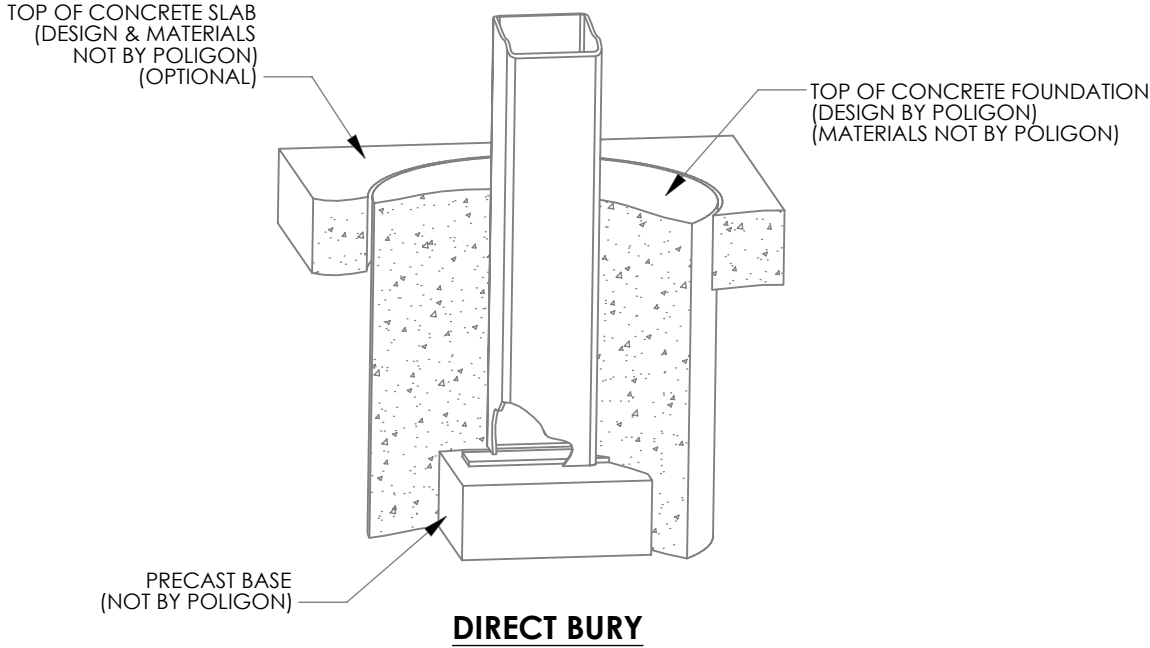
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SHEET
COLUMN LAYOUT

**POLIGON ENGINEERING WILL DETERMINE THE REQUIRED
BASE PLATE STYLE WHEN DESIGNING THIS STRUCTURE.**



- NOTES:
1. THE REQUIRED BASE PLATE STYLE IS A FUNCTION OF THE PROJECT SPECIFIC ENGINEERING REQUIREMENTS.
 2. POLIGON ENGINEERING WILL DETERMINE THE REQUIRED BASE PLATE STYLE BECAUSE IT CAN DRAMATICALLY AFFECT THE STRUCTURE'S DESIGN AND PERFORMANCE.
 3. WE UNDERSTAND THE BASE PLATE STYLE CAN IMPACT THE CONSTRUCTION SEQUENCE (I.E. THE TIMING OF THE SLAB INSTALLATION), SO PLEASE USE THE FOLLOWING INFORMATION AS A GENERAL GUIDE:
 - PINNED BASE PLATES ARE PROVIDED ON THE MAJORITY OF POLIGON STRUCTURES
 - FIXED BASE PLATES ARE TYPICALLY ONLY REQUIRED IN HIGH SEISMIC REGIONS, ON SOME LARGE STRUCTURES (> 2000 SQ FT), AND ON CANTILEVERED STRUCTURES.
 4. IF YOUR PROJECT HAS UNIQUE BASE PLATE, SLAB, OR FOUNDATION REQUIREMENTS, PLEASE COMMUNICATE THAT INFORMATION WITH POLIGON WHEN PLACING AN ENGINEERING ORDER.

STOP!!
NOT FOR CONSTRUCTION
**USE FOR PRELIMINARY
PLANNING AND ESTIMATING
ONLY**

ELECTRICAL ACCESS AND CUTOUTS

WHAT IS ELECTRICAL ACCESS?

- A 1-1/8" Ø HOLE IS PROVIDED THROUGH COLUMN BASEPLATE.
- 3/4" Ø HOLES ARE PROVIDED THROUGH CONNECTION PLATES TO ALLOW WIRE ACCESS UP INTO COMPRESSION TUBE/RING OR RIDGE BEAM.
- ELECTRICAL ACCESS INTO ADDITIONAL MEMBERS IS AVAILABLE UPON REQUEST.

WHAT ARE ELECTRICAL CUTOUTS?

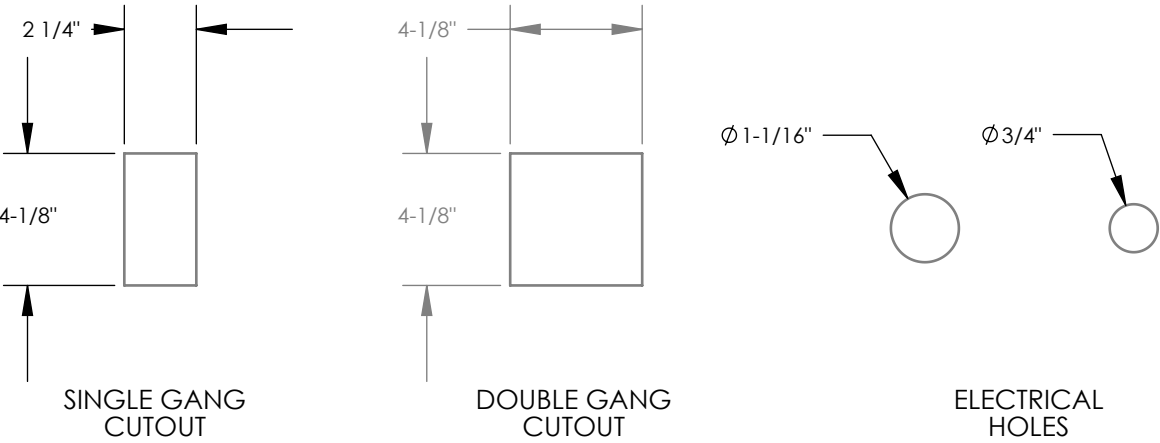
- ROUND HOLE OR RECTANGULAR CUTOUTS IN MEMBERS, REQUIRED FOR INSTALLATION OF ELECTRICAL FIXTURES OR WIRE ACCESS.
- ALL CUTOUT REQUESTS MUST BE REVIEWED BY OUR ENGINEERING DEPARTMENT (THEIR PLACEMENT MAY AFFECT STRUCTURAL INTEGRITY).
- POLIGON IS NOT RESPONSIBLE FOR UNAUTHORIZED CUTOUTS MADE IN THE FIELD.
- UNAUTHORIZED ELECTRICAL CUTOUTS MADE IN THE FIELD WILL VOID THE SHELTER'S WARRANTY.
- TO ENSURE FLUSH MOUNTING OF AN ELECTRICAL FIXTURE, ROUND COLUMNS WILL BE EQUIPPED WITH A WELDED IN ENCLOSURE THAT ACCOMMODATES A STANDARD UL LISTED BOX.

HOW TO COMMUNICATE CUTOUT REQUIREMENTS

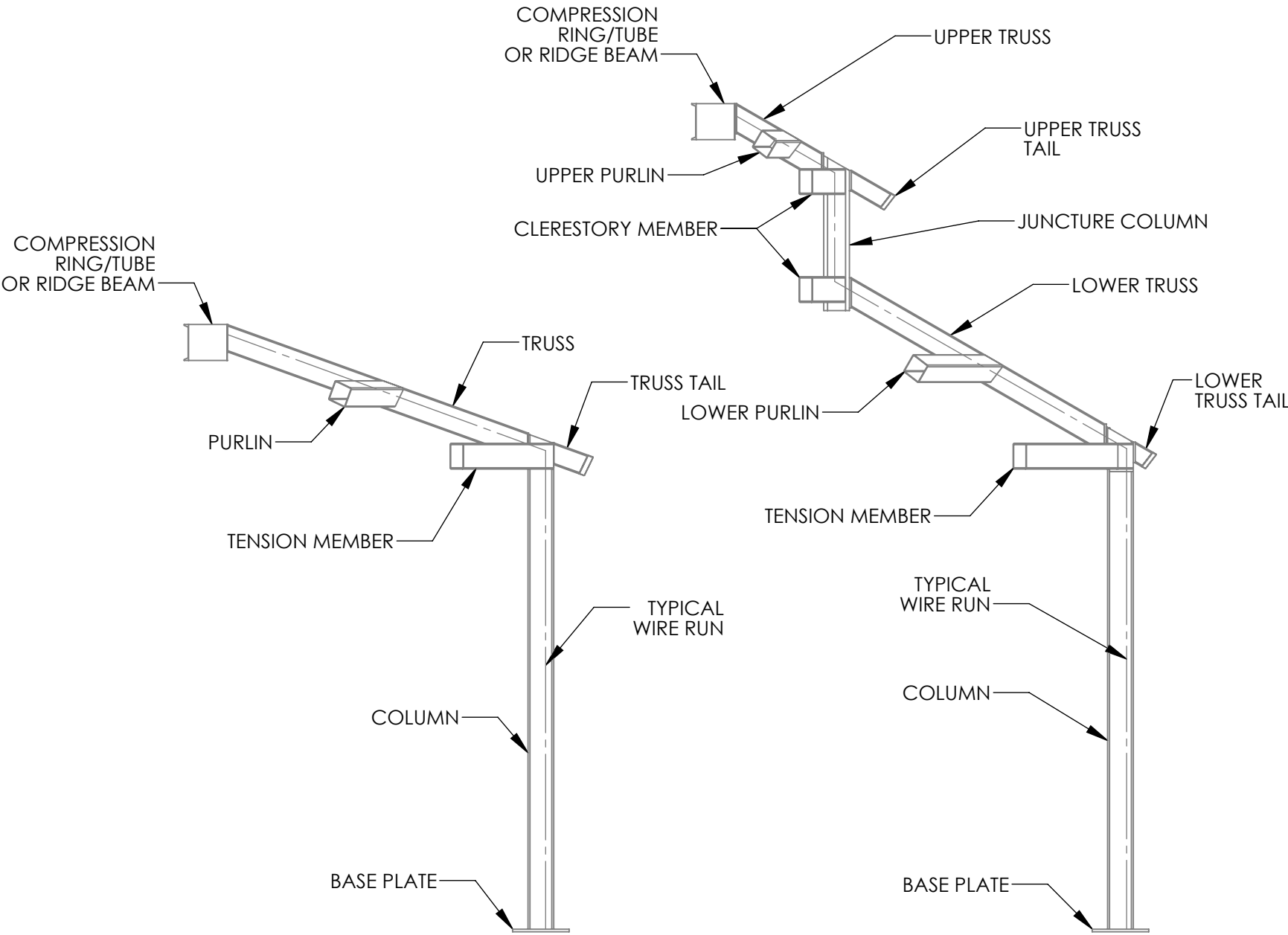
- WHEN ORDERING THE STRUCTURE, MARK UP THE SUBMITTAL DRAWINGS TO ACCURATELY COMMUNICATE CUTOUTS WITH EXACT DIMENSION(S) AND LOCATION(S).
- IF THE SUBMITTAL SET IS NOT AVAILABLE, MARK UP THE SKETCHES ON THIS SHEET SHOWING CUTOUTS WITH EXACT DIMENSION(S) AND LOCATION(S).
- CUTOUT SIZE MUST BE COMMUNICATED AT TIME OF ORDER.
- INDICATE ON WHICH SIDE OF MEMBER THE CUTOUT IS TO BE LOCATED.
- IF NOT SPECIFIED TO THE BOTTOM, CENTER, OR TOP OF CUTOUT, DIMENSION WILL BE TAKEN TO THE BOTTOM OF THE CUTOUT.

WHERE CAN CUTOUTS BE LOCATED?

- OUTLET CUTOUTS ARE TYPICALLY LOCATED 18" ABOVE GRADE ON THE INSIDE FACE OF THE COLUMN.
- LIGHT SWITCH CUTOUTS ARE TYPICALLY LOCATED 48" ABOVE GRADE ON THE INSIDE FACE OF THE COLUMN.
- ALL CUTOUTS ARE TYPICALLY AT LEAST 12" FROM ANY STRUCTURAL JOINTS.
- ALL CUTOUTS ARE TYPICALLY CENTERED ON THE MEMBER WALL (NOT CLOSE TO THE CORNERS).
- CONTACT LOCAL POLIGON REPRESENTATIVE WITH ANY ADDITIONAL QUESTIONS.
- CUTOUTS CAN BE LOCATED THROUGH COVER PLATES.



TYPICAL ELECTRICAL CUTOUTS



TYPICAL WIRE RUNS

<div>5</div> <div>SHEET</div>	PROJECT: STOWE SCHOOL SHELTER	PRINT DATE: 6/4/2015	DRAWN BY: rallun	REV LEVEL: A	<div>poligon[®]</div> <div>COPYRIGHT 2015</div> <div>PATENTED OR PATENTS PENDING</div> <div>PORTERCORP 4240 N. 136th AVE HOLLAND, MI 49424</div> <div>by PORTERCORP</div> <div>www.poligon.com</div> <div>(616)399-1963</div>
	PROJECT LOCATION: DULUTH, MN	JOB NO: 12318		SCALE: 1:32	
	DRAWING: ELECTRICAL ACCESS AND CUTOUTS	CAD MODEL: E1~HXE-10-TGSS-12318			

Product Guide Specification

**DIVISION 107300
SPECIALTIES MANUFACTURERS OF PROTECTIVE COVERS**

PART 1 - GENERAL

[reference CSI 2004 MasterFormat™ Division 10
(Specialties Manufacturers) category 7300 (Protective Covers)]

1.1 DESCRIPTION OF PRODUCT

- A. **GXO2 40 (Oxford 2-Tier) with 16" Standing Seam Metal Roof over Tongue & Groove.**
- B. **ROOF SLOPE: 8/12.**
- C. **Minimum Clearance Height (MCH): 7.5 in ft.** Minimum clearance height under the structure indicates the lowest height of a member from finish grade for clearance under the structure. This is generally the clearance under roof eave or frame, whichever is lower.

1.2 REFERENCES

- A. **REFERENCE STANDARDS:**
 - 1. AISC - American Institute of Steel Construction Manual of Steel Construction.
 - 2. ASTM - American Society for Testing and Materials.
 - 3. AWS - American Welding Society.
 - 4. LEED - Leadership in Energy and Environmental Design.
 - 5. OSHA - Occupational Safety and Health Administration Steel Erection Standard 29 CFR 1926 Subpart R-Steel Erection.
 - 6. PCI - Powder Coating Institute.
 - 7. SSPC - The Society for Protective Coatings.

1.3 SUBMITTALS

- A. Submit 4 sets of submittal drawings and 2 sets of calc books, both signed and sealed by a Professional Engineer licensed in the State of MN.
- B. **PRODUCT DESIGN REQUIREMENTS:**

The building shall meet the following design requirements as shown on the drawings:

 - 1. Building Code: **MNBC 2007.**
 - 2. Ground Snow Load (Pg): **60.**
 - 3. Basic Wind Speed (V): **90.**
 - 4. Seismic Design: See drawings.

C. SUBMITTAL REQUIREMENTS:

Calculations and Submittal drawings shall include, at a minimum:

1. Calculations:
 - a. References to building codes and design manuals used for calculations.
 - b. Identification of lateral force resisting system.
 - c. Formulas used for determining snow, wind, and seismic loads to specific project location.
 - d. Three dimensional modeling input, model geometry, and analysis results.
 - e. Member design results and controlling load combinations.
 - f. Connection design for structural bolts, welds, plate thicknesses, and anchorage to the foundation.
 - g. Foundation designs shall include the required combinations of gravity and lateral loads.
2. Submittal Drawings:
 - a. Anchor bolt layout.
 - b. Foundation design.
 - c. Three dimensional views of frame.
 - d. Member sizes and locations.
 - e. Structural connection details, including bolt sizes and plate thicknesses.
 - f. Roof trim and connection details for installation clarity.

D. FOUNDATION DESIGN:

1. The shelter shall be set on foundations designed by manufacturer.
2. Foundation materials shall be provided by contractor.
3. Owner shall provide manufacturer with complete information about the site including soil bearing capacity and lateral load capacity.
4. If soil data are not provided, foundations will be designed to the minimum values identified in the governing building code.

E. ANCHOR BOLTS:

Anchor bolts shall be provided by manufacturer.

F. LEED SUBMITTALS:

1. LEED SS Credit 7.1: Sustainable Sites, Heat Island Effect/Non-Roof.
2. LEED SS Credit 7.2: Sustainable Sites, Heat Island Effect/Roof.

1.4 QUALITY ASSURANCE

A. MANUFACTURER QUALIFICATIONS:

1. Minimum of (10) years in the shelter construction industry.
2. Full time on-staff Licensed Engineer.
3. Full time on-staff AWS Certified Associate Welding Inspector.
4. Full time on-staff Quality Assurance Manager.
5. Full time on-staff LEED AP.
6. All welders AWS Certified.
7. Manufacturer owned and controlled finishing system to include shot blast, pretreatment, primer, and top coat.
8. Published Quality Management System.
9. Annual audit of Quality System and Plant Processes by Third Party Agency.
10. Annual audit of powder coat finish system by Third Party Agency (PCI).

B. MANUFACTURER'S CERTIFICATONS:

1. PCI 4000 S Certified, Certification thru Powder Coating Institute for original equipment manufacturers (OEMs) to evaluate process on entire finish system to add powder coat over steel.
2. City of Los Angeles, CA Approved Fabricator Type I Steel.
3. Clark County, NV Approved Fabricator steel.
4. City of Houston, TX Approved Fabricator Structural Steel and Structural Insulated Panels.
5. Miami Dade County Certificate of Competency for Structural Steel and Miscellaneous Metal Products and Assemblies.
6. State of Utah Approved Fabricator for Medium and High Strength Steel.
7. City of Riverside, CA Approved Fabricator Type I Steel.
8. City of Phoenix, AZ Approved Steel Fabricator.

1.5 FIELD OR SITE CONDITIONS

- A. Foundations shall be at the same elevation unless specifically noted otherwise on the drawings.

1.6 MANUFACTURER WARRANTY

- A. Shelter must have a (10) year limited warranty on steel frame members.
- B. Shelter must have a (10) year limited warranty on paint system.
- C. Pass through warranty of Metal Roof manufacturer shall be provided upon request.

PART 2 - PRODUCTS

2.1 SHELTER SYSTEM AND MATERIALS

A. MANUFACTURERS:

1. Acceptable Manufacturer: Poligon, a Product of Porter Corp, 4240 N 136th Ave., Holland, MI, 49424; 616.399.1963; E-mail: info@poligon.com; www.poligon.com. Receive pricing from Sue Ayers at Northland Recreation, 1567 East County Road E, St. Paul, MN 55110, Phone 651-633-0123, Fax 651-633-1515.
2. The product shall be designed, produced, and finished at a facility operated and directly supervised by the supplier who has a minimum of (10) years in the business of making pre-manufactured shelters.

B. SUBSTITUTION LIMITATIONS:

1. Substitutions must be approved a minimum of (10) days before bid. All approved manufacturers shall be notified in writing before the bid date and shall not be allowed to bid without written notification.
2. Alternate suppliers must meet the qualifications and provide proof of certifications listed under Section 1.4 QUALITY ASSURANCE.
3. Alternate suppliers must provide an equivalent paint system to Poligon's Poli-5000 listed under Section 2.1 C. 8. FINISHES.
4. Staff members' cumulative experience in fabrication will not be an acceptable alternative for manufacturer's experience in the shelter construction industry.

C. PRODUCT REQUIREMENTS AND MATERIALS:

1. GENERAL:

The pre-engineered package shall be pre-cut unless otherwise noted and prefabricated which will include all parts necessary to field construct the shelter. The shelter shall be shipped knocked down to minimize shipping expenses. Field labor will be kept to a minimum by pre-manufactured parts. Onsite welding is not necessary.

2. REINFORCED CONCRETE:

- a. Concrete shall have minimum 28-day compressive strength of 3,000 psi and slump of 4" (+/- 1"), unless otherwise noted on the drawings.
- b. Reinforcing shall be ASTM A615, grade 60.

3. STEEL COLUMNS:

- a. Hollow structural steel tube minimum ASTM A500 grade B with a minimum wall thickness of 3/16".
- b. Unless columns are direct buried, columns shall be anchored directly to concrete foundation with a minimum of four anchor rods to meet OSHA requirement 1926.755(a)(1).

4. STRUCTURAL FRAMING:

Hollow Structural Steel tube minimum ASTM A500 grade B, "I" beams, tapered columns or open channels shall not be accepted for primary beams. Frame will have a **STANDARD POLI-5000** finish. Color chosen from manufacturer's standard color chart: **TBD**.

5. COMPRESSION MEMBERS:

Compression Rings of structural channel or welded plate minimum ASTM A36 or compression tubes of structural steel tube minimum ASTM A500 grade B shall only be used.

6. CONNECTION REQUIREMENTS:

- a. Anchor bolts shall be ASTM F1554 (Grade 36) unless otherwise noted.
- b. Structural fasteners shall be zinc plated ASTM A325 high strength bolts and A563 high strength nuts.
- c. Structural fasteners shall be hidden within framing members wherever possible.
- d. No field welding shall be required to construct the shelter.
- e. All welds shall be free of burrs and inconsistencies.
- f. Exposed fasteners shall be powder coated by manufacturer prior to shipment to match frame or roof colors as applicable.
- g. Manufacturer shall provide extra structural and roofing fasteners.

7. ROOFING MATERIALS:

a. PRIMARY ROOF DECK OF TONGUE AND GROOVE (TG):

- 1) T&G shall be of 2 x 6 tongue and groove, southern yellow pine, kiln dried #1 grade or better, edge V'd on both sides allows either side of board to be used for best side selection.
- 2) Manufacturer shall supply 30 pound felt and drip edge if both primary and secondary roofs are being supplied by the manufacturer.
- 3) Contractor shall cut T&G down to required lengths and shall seal underside of boards per architect's or owner's recommendations using coating supplier's instructions.

b. SECONDARY ROOF SYSTEM OF STANDING SEAM METAL ROOFING (SS):

- 1) Standing seam metal roofing shall be 24 gauge galvalume 16" wide with ribs 1 3/4" high.
- 2) Roof surface shall be painted with Kynar 500 to the manufacturer's standard color: **TBD**. Ceiling surface shall be a "wash coat" primer.
- 3) Angles shall be cut in the field.
- 4) Metal roofing trim shall match the color of the roof and shall be factory made of 26 gauge Kynar 500 painted steel.

- 5) Trim shall include panel ridge caps, hip caps, eave trim, splice channels, rake trim, roof peak cap, and corner trim as applicable for model selected. Trim may need to be cut to length and notched. Installation drawings shall have detailed information on how to cut and affix roof trim.
 - 6) Ridge, hip, and valley caps shall be pre-formed with a single central bend to match the roof pitch and shall be hemmed on the sides.
 - 7) Roof peak cap shall be pre-manufactured.
 - 8) Manufacturer shall supply painted screws and butyl tape.
8. FINISHES:
- a. STANDARD POLI-5000 FINISH:
 - 1) Steel shall be cleaned, pretreated and finished at a facility owned and directly supervised by the manufacturer.
 - 2) Steel shall be shot blasted to SSPC-SP10 near-white blast cleaning. SSPC-SP2 hand tool cleaning will not be an acceptable alternative.
 - 3) Parts shall be pretreated in a 3 stage iron phosphate or equal washer.
 - 4) Epoxy primer powder coat shall be applied to parts for superior corrosion protection.
 - 5) Top coat of Super Durable TGIC powder coat shall be applied over the epoxy primer.
 - 6) Finish shall not have any VOC emissions.
 - 7) Sample production parts shall have been tested and meet the following criteria:
 - a) Salt spray resistance per ASTM B 117/ ASTM D 1654 to 10,000 hours with no creep from scribe line and rating of 10.
 - b) Humidity resistance per ASTM D2247-02 to 5,000 hours with no loss of adhesion or blistering.
 - c) Color/UV resistance per ASTM G154-04 to 2,000 hours exposure, alternate cycles with results of no chalking, 75% color retention, color variation maximum 3.0 E variation CIE formula (before and after 2,000 hours exposure).
 - 8) The manufacturer shall be PCI 4000 S Certified.
 - 9) Exposed fasteners for frame and ornamentation shall be powder coated to match structure.

PART 3 - EXECUTION

3.1 INSTALLERS STORAGE AND HANDLING

- A. Protect building products after arrival at destination from weather, sunlight, and damage.
- B. Installer shall store product elevated to allow air circulation and to not introduce mold, fungi decay or insects to the product.
- C. Product must be handled with protective straps or padded forks if lifting with mechanical equipment. Use of chain or cable to lift product into place will not be accepted and may void manufacturer's warranty.
- D. To curtail warping of lumber, all units shall remain strapped and packaged while being stored.
- E. The secondary roof shall be installed immediately after the primary roof to prevent moisture damage to wood.

3.2 ERECTION

- A. **INSTALLATION:**
Install all components according to manufacturer's installation instructions and these specifications.
- B. **GENERAL CONTRACTOR:**
Interface with other work is to be coordinated by the customer or the customer's agent. Certain designs have electrical or other plumbing requirements that are not supplied by Poligon.
- C. **TOLERANCES:**
Tolerances on steel structural members are set according to AISC construction practices, abided in the factory, and cannot be increased. No field slotting or opening of holes will be allowed. It is therefore essential that contractors conform to the tolerances specified on the installation drawings for anchor bolt or column layout details.
- D. **OSHA COMPLIANCE:**
OSHA Compliance to Steel Erection Standard 29CRF 1926 Subpart R-Steel Erection.

3.3 REPAIR

- A. Do not attempt any field changes without first contacting Poligon.

3.4 FIELD OR SITE QUALITY CONTROL

- A. Field or Site Tests and Inspections are not required by Poligon but may be required by the customer or by the local building inspector.

END OF SECTION