

## Section 200 General Conditions

### 201.0 DESCRIPTION

These general conditions supplement the MnDOT Standard Specifications for Construction, latest edition. To the extent there is any conflict, the specific provision contained in these general conditions shall control.

### 201.1 DEFINITIONS

Whenever used in the General Conditions or in the other Contract Documents, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:

*Addenda:* Written or graphic instruments issued prior to the opening of Bids that clarify, correct, or change the bidding documents or the Contract Documents.

*Agreement:* The written agreement between the Owner and the Contractor covering the Work to be performed, including the Contractor's Bid and Bonds.

*Bid:* The offer or proposal of the Bidder submitted on the prescribed form setting forth the unit prices for the Work to be performed.

*Bidder:* Any person, firm, or corporation submitting a Bid for the Work.

*Bonds:* Bid, performance, and payment bonds and other instruments of security, furnished by the Contractor and its surety in accordance with the Contract Documents.

*Certificate of Compliance:* A document certified by a competent authority that the supplied good or service meets the required specifications.

*Change Order:* A written order to the Contractor signed by the Owner authorizing an addition, deletion, or revision in the Work, or an adjustment in the Contract Price or the Contract Time issued after execution of the Agreement.

*City:* The City of St. Louis Park.

*Contract Documents:* The Bid, Agreement, Specifications, Drawings, Addenda (whether issued prior to opening of bids or execution of the Agreement), Bonds, and Modifications.

*Contract Price:* The total monies payable to the Contractor under the Contract Documents.

*Contract Time:* The period of time allotted in the contract documents for completion of work. Indicated by number of **working days** or the **date** stated in the Agreement for the completion of the work.

*Contractor:* The individual, firm, or corporation with whom the Owner has executed the Agreement.

*Drawings:* The drawings and plans that show the character and scope of the Work to be performed and that have been prepared or approved by the Engineer and are referred to in the Contract Documents.

*Effective Date:* The date the Project is awarded by the City Council.

*Engineer:* The City Engineer and other City Engineering Department representatives named as such in the Agreement, or their assigns, or an outside consultant retained by the City to act as Engineer.

*Hard Copy (Copies):* Contract Documents that consist of complete sets of those documents specifically listed in the Agreement, including the version of the plans and specifications that are signed and sealed with original signature (or unalterable and legally acceptable facsimile copy of said signature) denoting the designer's final intent for bidding purposes.

*Modification:* Any written amendment of any of the Contract Documents (including Change Orders) duly executed and delivered after execution of Agreement.

*Notice of Award:* The written notice by Owner to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified. Owner will sign and deliver the Agreement.

*Notice to Proceed:* A written notice given by Owner to Contractor (with a copy to Engineer) fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform Contractor's obligations under the Contract Documents. If there is no notice to proceed, it shall be the date of the agreement or such other date as may be established in the agreement.

*Owner:* The City of St. Louis Park, for whom the Work is to be performed.

*Project:* The entire construction to be performed as provided in the Contract Documents.

*Project Representative:* The authorized representative(s) of the Engineer who is assigned to the Project or any parts thereof.

*Responsible Contractor:* A Contractor as defined in Minnesota Statutes, §16C.285, subdivision 3.

*Retainage:* Payment earned by the Contractor but not paid until the completion of the Project or in accordance with the terms of the Agreement. The amount is held back as assurance of the quality of the work and completion of the Project.

*Shop Drawings:* All drawings, diagrams, illustrations, brochures, schedules, and other data which illustrate the equipment, material, and work to be furnished by the Contractor.

*Specifications:* The Instructions to Bidders, these General Conditions and other City Standard Specifications, along with the Special Conditions. Also included is the Minnesota Department of Transportation Standard Specification and the City Engineers Association Standard Specification.

*Subcontractor:* An individual, firm, or corporation having a direct contract with the Contractor or with any other Subcontractor for the performance of a part of the Work at the site.

*Substantial Completion:* The point of time when all contract work, with the exception of minor cleanup and punch list items, has been completed, and the project may be used, unencumbered, for its intended purpose.

*Whole Agreement:* The contract documents, as described in the executed contract, form the contract. The contract represents the entire and integrated agreement between the

parties and supersedes all prior negotiations and agreements, either written or oral, and may not be modified except by

- a written amendment to the contract signed by both parties,
- a written change order,
- a written interpretation issued by the Engineer pursuant to Section 202.1, or
- a written order for a minor change in the work issued by the Engineer pursuant to Section 208.0.

*Work:* Any and all obligations, duties, and responsibilities necessary to the successful completion of the Project assigned to or undertaken by the Contractor under the Contract Documents, including the furnishing of all labor, materials, equipment and incidental items.

*Working Day:* A calendar day, exclusive of Saturdays, Sundays, and state recognized legal holidays, on which weather and other conditions not under the control of the Contractor will permit construction operations to proceed for at least two hours of the day with the normal working force engaged in performing the controlling item or items of work which would be in progress at that time. Fractional working days will be counted for those days where it is possible to work two hours or more but less than eight hours.

*Written Notice:* Correspondence delivered in writing via e-mail and/or United States Postal Service.

## 201.2 SCOPE AND INTENT OF DOCUMENTS

### 201.2.1 GENERAL

The contract documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of the documents is to include all items necessary for the proper execution of the work. These specifications and project plans are intended to supplement, but not necessarily duplicate each other, and together constitute one complete set of specifications and plans so that any work exhibited in the one and not in the other, shall be executed just as if it has been set forth in both, in order that the work shall be completed according to the complete design of the Engineer.

### 201.2.2 FIGURE DIMENSIONS TO GOVERN

Dimension and elevations shown on the plans shall be accurately followed, even though they differ from scaled measurements. No work shown on the plans, the dimensions of which are not indicated, shall be executed until the required dimensions have been obtained from the Engineer.

### 201.2.3 CONTRACTOR TO CHECK PLANS AND SCHEDULES

The Contractor shall check all dimension, elevations, and quantities shown on the plans, and schedules provided by the Engineer, and shall notify the Engineer of any discrepancy between the plans and the conditions on the ground, or any error or omission in plans, or in the layout as given by stakes, points, or instructions. Further instructions will be furnished by the Engineer should such discrepancy or error or omission be discovered, and the Contractor shall carry out such instructions as if originally specified.

#### 201.2.4 STANDARD SPECIFICATIONS

Reference to standard specifications of any technical society, organization, or association, or to codes of local or state authorities, shall mean the latest standard, code specification or tentative specification adopted and published at the date of taking bids, unless specifically stated otherwise.

#### 201.2.5 DRAWINGS AND SPECIFICATIONS

Unless otherwise provided in the contract documents, the Contractor will be furnished free of charge all copies of drawings and specifications reasonably necessary for the execution of the work. The Contractor shall keep one (1) copy of the drawing and specifications on the site of the project available to the Engineer and their representatives.

All drawings, specifications, and copies furnished by the City or any Engineer employed by it remain the property of the City or the Engineer and are not to be used on other work. The plans and specifications are intended to cover the complete installation, and any minor details not shown or described but necessary for the successful working of the installation must be furnished without additional cost.

#### 201.2.6 MANUFACTURERS' DRAWINGS AND SCHEDULES

The Contractor shall present to the Engineer in triplicate, schedules and detail dimensioned manufacturers' drawings of all controllers, apparatus machinery, valves, flow chart, and such fittings and devices as are required for the completion of the work. A set of the documents will be returned to the Contractor with the Engineer's approval or notations. In case of lack of approval, the Contractor is to submit new drawings corrected as required by the Engineer.

The Engineer's approval of such drawings or schedules shall not relieve the Contractor from responsibility for deviations from drawings or specifications unless the Contractor has, in writing, called the Engineer's attention to such deviations at the time of submission, nor shall it relieve the Contractor from responsibility for errors of any sort in shop drawings or schedules.

All such documents shall be submitted early to the Engineer to allow ample time for consideration.

#### 201.2.7 APPROXIMATE ESTIMATE OF QUANTITIES

The bidder's attention is directed to the fact that contracts based on unit prices, the estimate of quantities of work to be done, and materials to be furnished under these specifications, as shown on the proposal form and in the contract, are approximate and are given only as a basis of calculation upon which to determine the lowest bidder.

The Owner does not assume any responsibility that estimated quantities shall be maintained in the construction of the project, nor shall the Contractor plead misunderstanding or deception because of such estimate of quantities, or the character of the work or location, or other conditions pertaining thereto. The Owner reserves the right to increase or decrease any or all of the above mentioned quantities of work or to omit any of them, as it may deem necessary, and such increase or decrease of the

quantities given for any of the items shall not be considered as sufficient grounds for granting an increase in the unit prices bid.

**202.0 ENGINEER**

**202.1 INTERPRETATION OF CONTRACT**

The Engineer shall have general supervision and direction of the work. The Engineer is the agent of the City only to the extent provided in the contract documents and as authorized by law. The Engineer has authority to stop the work whenever such stoppage may be necessary to insure proper execution of the contract. The Engineer is recognized by both parties to the contract as the interpreter of the contract documents. The Engineer shall, within a reasonable time, make written decisions on all claims, on all matters relating to the execution and progress of the work, or the interpretation of the contract documents.

The Engineer shall decide any and all questions as to quality of materials furnished for the work, and shall determine the amount and quantity of the several kinds of work performed, and materials furnished, which are to be paid for under the contract. Any work not specified on the plans, but which may be fairly implied or understood as included in the contract, shall be done by the Contractor without extra charge. The Engineer shall be permitted to make such corrections and interpretations as may be deemed necessary for the fulfillment of the intent of the plans and specifications. In the case of any discrepancy occurring between the plans and specifications, the decision of the Engineer is final.

**202.2 EXCLUSIONS FROM DUTIES**

The Engineer will not undertake any of the responsibilities of the Contractor, the subcontractor or the Contractor's superintendent, expedite the work for the Contractor, advise on or issue directions relative to any respect of the means, methods, techniques, sequences or procedures of construction, or participate in specialized field or laboratory tests.

**202.3 PROJECT REPRESENTATIVE**

The Engineer and any designated representatives shall at all times have access to the work whenever it is in preparation or progress, and the Contractor shall provide proper facilities for access and inspection.

A Project Representative may be stationed on the work to report to the Engineer as to the progress of the work and the manner in which it is performed, also to report when it appears that the materials furnished, or the work performed by the Contractor fail to fulfill the requirements of the contract, and to call the attention of the Contractor to any such failure or infringement. In case of any dispute arising between the Contractor and the Project Representative, the Project Representative shall have the authority to temporarily suspend the work until the matter can be decided by the Engineer. Except upon written instructions from the Engineer (a copy of which will be furnished to the Contractor), the Project Representative shall not authorize any deviation from the contract documents.

No advice which the Project Representative may give the Contractor shall be construed as binding upon the City nor will such advice release the Contractor from the fulfillment of the terms of the contract.

The Engineer will conduct inspections to determine the dates of substantial completion and final completion, will receive written guarantees and related documents required by the contract and assembled by the Contractor, and will issue a final certificate for payment.

**202.4 REJECTION OF WORK**

The Engineer will have authority to reject work which does not conform to the contract documents. Whenever in the Engineer's reasonable opinion it is considered necessary or advisable, to insure the proper implementation of the intent of the contract documents, the Engineer will have authority to require the Contractor to stop the work or any portion, or to require special inspection or testing of the work as provided in Section 204.8, whether or not the work is then fabricated, installed or completed. However, neither the Engineer's authority to act, nor any decision made in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Engineer to the Contractor, any subcontractor, any of their agents or employees, or any other person performing any of the work.

**202.5 CONSTRUCTION STAKING**

The City will provide staking for the work. The Contractor shall provide the Engineer at least two working day advance notice of need for construction staking. The Contractor shall preserve reference points established by the City. If, in the opinion of the Engineer, any of the reference points have been carelessly destroyed or disturbed by the Contractor, the cost for replacing it shall be charged against the Contractor and shall be deducted from the payment for the work.

**203.0 CONTRACTOR RESPONSIBILITY**

**203.1 CONTRACTOR'S VIEW OF SITE**

By executing the contract, the Contractor represents that they have visited the site, familiarized themselves with the local conditions under which the work is to be performed, and correlated observations with the requirements of the contract documents.

**203.2 REVIEW OF CONTRACT DOCUMENTS**

The Contractor shall do no work without drawings, specifications or interpretations. The Contractor distinctly and expressly declares and acknowledges that it has carefully studied and compared the agreement, conditions of the contract, drawings, specifications, addenda and modifications and has reported to the Engineer any error, inconsistency or omission they may have discovered. Necessary changes shall be adjusted as provided in the contract for changes in the work. Should anything be omitted from the specifications and plans which is necessary to a clear understanding of the work, or should it appear various instructions are in conflict, then the Contractor shall secure written clarification from the Engineer before proceeding with the construction affected by such omissions or discrepancies. As to any work done prior to written clarification, the

Contractor distinctly agrees that it will not thereafter make any claim or demand upon the City based upon or arising out of any alleged misunderstanding or misconception on the contract documents, and that it waives the right to subsequently assert ambiguity in the contract documents.

It is understood and agreed that the work shall be performed and completed according to the true spirit, meaning and intent of the contract, specifications and plans.

**203.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

The Contractor shall supervise and direct the work, using the best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the contract, subject to the conditions of Section 202.2.

**203.4 SOIL BORINGS AND SUB-SURFACE DATA**

The Contractor may examine the logs of borings, cores and other sub-surface data, if available, by making a request therefor to the City and to the Engineer. Soil boring information is included on the plan sheets or in the specifications. The Contractor is advised to determine to their own satisfaction the exact soil and groundwater conditions prior to submitting their bid. The City has no way of knowing the scope or extent of the information needed by bidders. Information obtained by the City is only for general estimate purposes, and is less demanding than is the information required by bidders. The Contractor must interpret such information according to their own judgment and must not rely upon such information as an accurate description of the sub-surface conditions that may arise. The Contractor assumes all risks connected with the sub-surface conditions actually encountered in performing the work, even though such actual conditions may result in the Contractor performing more or less work than originally estimated. Any dewatering required, unless specifically listed as a pay item, will be incidental and no direct compensation will be made therefore.

Any soil investigations made or to be made by a testing laboratory will be considered to have been made for the City as the testing laboratory's client. Any partial or complete reproduction of soil borings or other soil data issued with these contract documents for informational purposes shall not be considered as part of the contract documents for the construction of the project. The correctness of the information is not guaranteed by the City or the Engineer and the information is not to be considered as a factor in the computation of bids. If any bidder desires, the City will permit the taking of further borings or tests, at the bidder's expense.

**203.5 LABOR, MATERIALS, SALES TAX AND EMPLOYEES**

Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, materials, materials sales tax, equipment, tools, construction equipment and machinery, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the work. The Contractor shall include materials sales tax in their unit bid price that is being charged by material supplies.

The Contractor agrees to furnish efficient business administration and supervision, and to keep upon the work at all times an adequate supply of workers, materials, and to secure

its execution in the best and soundest way and in the most expeditious and economical manner, consistent with the interest of the Owner.

The Contractor shall at all times enforce strict discipline and good order among their employees and shall not employ on the work any unfit person or anyone not skilled in the task assigned to them.

## 203.6 **WARRANTY AND GUARANTEE**

### 203.6.1 **WARRANTY**

The Contractor warrants to the City and the Engineer that all materials and equipment furnished under this contract will be new unless otherwise specified, and that all work will be of good quality, free from faults and defects, and in conformance with the contract documents. All work not so conforming to these requirements, including substitutions not properly approved and authorized may be considered defective. If required by the Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The warranty and guarantee provided shall be in addition to and not in limitation of any other warranty or remedy required by law or by the contract documents.

### 203.6.2 **GUARANTEE**

The Contractor shall be held responsible for any and all defects which may develop in any part of the entire installation furnished by them and upon receipt of written notice from the Engineer, shall immediately replace and make good without expense to the Owner such faulty part or parts, including damage resulting from same, during a period of one (1) year from the date of final acceptance of the installation by the City pursuant to Section 206.5, except when specific guarantee for another length of time is elsewhere specified.

The acceptance of the installation, or any part of it, shall not act to waive the liability on the part of the Contractor and their surety.

## 203.7 **SUPERINTENDENT**

The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the project site during the progress of the work. The superintendent shall be satisfactory to the Engineer, and shall not be changed except with the consent of the Engineer, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in their employ. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications will be confirmed in writing. Other communications will be so confirmed on written request in each case.

## 203.8 **PROGRESS SCHEDULE**

The Contractor, immediately after being awarded the contract, shall prepare and submit for the Engineer's approval an estimated progress schedule for the work. The contractor must coordinate and communicate their schedule with the schedule of the private utility relocations. The progress schedule shall be related to the entire project to the extent required by the contract documents. This schedule shall indicate the dates for the starting and completion of the various stages of construction and shall be revised as required by



the conditions of the work, subject to the Engineer's approval. Contractor shall pursue the completion of subsequent phases of contract work in a diligent and continuous manner. The Engineer shall have the authority to limit the area of earth material exposed by pavement removal, excavation and borrow operations to a level commensurate with the Contractor's ability to proceed with the following grading and aggregate base placement in a timely manner.

203.9 PRECONSTRUCTION MEETING

Before starting the Work, a meeting will be held to review the construction schedules, procedures for processing Shop Drawings and other submissions and for processing payments, and to establish a working understanding between the parties regarding the Project. Present at the conference will be the Engineer, Project Representative, the Contractor and its employees who will be in charge of and/or supervising the work, as well as all Subcontractors, utility representatives, and other interested parties.

203.10 PROGRESS MEETINGS

The Engineer shall schedule periodic work progress meetings when necessary. The Contractor will attend with necessary sub-contractors when requested by the Engineer. The Contractor shall provide the Engineer with current information regarding the progress of the work.

203.11 EASEMENTS, PERMITS AND REGULATIONS

The City shall furnish all easements and surveys unless otherwise specified. The Contractor shall preserve all construction stakes and shall be responsible for replacement of disturbed survey markers.

The Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on the conduct of the work as drawn and specified. All work and materials covered by these specifications must conform strictly to the respective requirements of the latest edition of the Standard Specifications of the American Society of Testing Materials or of any other organization publishing standards which the specifications require to be met, all laws of the State of Minnesota, and all ordinances and regulations of governmental subdivisions thereof having jurisdiction, including the Minnesota Pollution Control Agency, and Minnesota Health Department.

If the Contractor observes that any of the contract documents are at variance therewith in any respect, the Engineer shall promptly be notified in writing, and any necessary changes shall be adjusted by appropriate modification. If the Contractor performs any work knowing it to be contrary to any laws, ordinances, rules, and regulations, and without such notice to the Engineer, the Contractor shall bear all resulting cost.

203.12 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the contract documents and shall not unreasonably encumber the site with any materials or equipment.

For the performance of the contract, the Contractor will be permitted to occupy such portions of streets and alleys, or other public places, or other right of way as provided for in the ordinances of the City as shown on the plans, or as permitted by the Engineer. A

reasonable amount of tools, materials, and equipment for construction purposes may be stored in such space, but not more than is necessary to avoid delays in construction.

Excavated and waste materials shall be piled or stacked in such a way as not to interfere with spaces that may be designated to be left free and unobstructed nor inconvenience occupants of adjoining property. Other Contractors of the City may, for all purposes required by their contracts, enter upon the work premises used by the Contractor, and the Contractor shall give to other Contractors of the City all reasonable facilities of assistance for the completion of adjoining work. Any additional grounds desired by the Contractor for their use shall be provided by them at their own cost and expense.

#### 203.13 CLEAN UP AND GENERAL SITE MAINTENANCE DURING CONSTRUCTION

Maintenance of the streets and areas under construction, detours, bypasses and equipment yards used in conjunction with the project shall be the responsibility of the Contractor. Said maintenance shall include but not be limited to keeping the streets free of obstacles, parked equipment, and barricades that are not in use, blading the traveled ways, and controlling the dust in the construction area.

All subgrade surfaces shall be maintained acceptably until the start of surfacing construction or restoration work, and until the work has been finally accepted. Additional materials shall be provided and placed as needed to compensate for trench settlement and to serve as temporary construction pending completion of the final surface improvements.

Final disposal of debris, waste materials, and other remains or consequences of construction, shall be accomplished intermittently as new construction items are completed and shall not be left to await final completion of all work. Cleanup operations shall be considered as being a part of the work covered under the contract items involved and only that work which cannot be accomplished at any early time shall be considered as final cleanup work not attributable to a specific contract item.

If disposal operations and other cleanup work are not conducted properly as the construction progresses, the Engineer may withhold partial payments until such work is satisfactorily pursued or they may deduct the estimated cost of its performance from the partial estimate value.

The cost of Clean Up and General Site Maintenance shall be incidental to the cost of the project and no additional compensation will be made.

Disregard of this provision shall be cause for suspension of the project until the Contractor can show evidence that people have been hired specifically to perform the work described above and will be on the project at all times. Streets in the area, not under construction, shall be kept free of construction materials, dirt, and other undesirable material.

##### 203.13.1 EMERGENCY CONTACT AND RESPONSE

The Contractor shall provide the name and telephone number of two (2) workers who can be called nights and weekends in case of an emergency. Each person must be capable of operating a loader, dump truck, grader, and maintaining traffic control devices. If for

some reason the roadway becomes impassable or traffic barricades, signs, drums, or traffic control devices become non-functional, it shall be the Contractor's responsibility to make the necessary corrections at their expense.

The Contractor shall respond within one (1) hour after receiving notice from the Engineer, or the Police dispatcher. Should the Contractor fail to respond to the notice within a period of two (2) hours, it shall become the option of the Engineer to have any independent Contractor or City crew make the necessary repairs. All costs for the materials, equipment used, and labor shall be deducted from the contract. This does not relieve the Contractor from its responsibility and still holds the City and its employees harmless.

#### 203.13.2 CLEANING AND PATCHING

The Contractor shall do all cutting, fitting or patching of their work that may be required to make its several parts fit together properly, and shall not endanger any work by cutting, excavating or otherwise altering the work or any part of it.

#### 203.13.3 PROTECTION OF WORK

The Contractor shall continuously maintain adequate protection of all their work from damage, injury, or loss arising in connection with their contract and shall make good any damage, injury, or loss, except such as may be directly due to errors in the contract or caused by agents or employees of the City.

#### 203.13.4 DRAINAGE

The Contractor shall provide at their own cost and expense all methods for adequately draining the work. No separate measurements for compensation will be paid for sub-drains, pumping, or other methods of draining. Unless a specific bid item is provided in the proposal, all costs for drainage shall be considered incidental.

#### 203.13.5 TRASH AND DEBRIS

Where materials or debris have washed or flowed into or have been placed in ditches, gutters, drains, catch basins or elsewhere as a result of the Contractor's operations, such material or debris shall be removed and satisfactorily disposed of during progress of the work. All ditches, channels, drains, etc., shall be kept in a clean and neat condition.

The Contractor will keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work, and at the completion of the Work will remove all waste materials, rubbish and debris from and about the premises as well as all tools, scaffolding and surplus materials, and will leave the site clean and ready for occupancy for the Owner. The Contractor will restore to their original condition those portions of the site not designated for alteration by the Contract Documents. Should the Contractor not clean up the site as specified, the Owner reserves the right to have this work done by others and deduct payment from the Contractor for the expense of said work.

#### 203.13.6 WORKMANSHIP AND CLEANUP

Upon completion of the contract, the Contractor shall dismantle and remove all construction equipment, barricades and surplus materials. The Contractor shall also clean the sewers and other structures and all streets, sidewalks, or bicycle facilities or other

services used by them and shall do any incidental work as may be necessary to have the work or any premises occupied by them restored in a neat workmanlike condition. This work shall be done with a minimum of inconvenience to the public or public travel.

**203.13.7 RUBBER TIRED EQUIPMENT**

The Contractor shall provide and use only rubber tired dozers, front end loaders and other necessary equipment, other than the paving machine, on all work where street pavement or portions of pavement are undisturbed. All such pavements shall be protected by the Contractor.

The Contractor will be required to repair any damage to areas of the project which were to remain undisturbed. All costs for repair will be paid for by the Contractor.

**203.14 TEMPORARY RESTROOM AND HAND WASH STATION**

The Contractor shall furnish and maintain a temporary restroom as approved by the Engineer. This project is located in a residential and or commercial area with neighborhood and city-wide traffic. Under no circumstances will failure to use the facilities be tolerated. Any person working on the project that chooses not to use the proper facilities will be asked to be removed from the project.

The Contractor shall also furnish, install, and maintain at least one temporary hand washing station for the Project. This station must be maintained a minimum of two times per week and additional times as needed. The Contractor shall post on the unit the phone number and contact information of the representative responsible for maintenance of the temporary hand washing station. Maintenance shall include, but not be limited to, disposal of used water, refilling fresh non-potable water, paper towel and soap replenishment, and removal of trash / used paper towels. The trash container must be able to be opened by feet so that paper towels can be discarded without opening the lid with your hands.

Any person working on the Project shall be allowed to use the temporary hand washing station or restroom. These facilities must be available for all representatives of the Project, including the Contractor and all sub-contractors, City employees and their representatives, and governing agencies. The temporary facilities shall be moved or removed as directed by the Engineer.

All costs incurred to furnish, install, and maintain the temporary restroom and hand washing station shall be incidental with no direct compensation.

**203.15 NO PARKING SIGNS**

The Contractor must post all areas during construction when parking restrictions are necessary to complete the work in the Contract. Ample signing shall be set in all boulevards by the Contractor 24 hours prior to the work being completed. Signs shall be supplied by the Engineer and returned to the Engineer by the Contractor.

**203.16 RAILWAY AND HIGHWAY CROSSINGS**

Where railway tracks or highways are to be crossed, the Contractor shall observe all the regulations and instructions of the railway company, Hennepin County or the Minnesota Department of Transportation as to methods of doing the work, or as to precautions for

the safety of property and the public. All negotiations with the Railway Company, Hennepin County or Minnesota Department of Transportation, except for right of way shall be made by the Contractor. The Contractor will not be paid direct compensation for such railway or highway crossing, and will only receive the compensation set out in the proposal.

## 203.17 UTILITIES

### 203.17.1 (1507) UTILITY PROPERTY AND SERVICE

Construction operations in the proximity of utility properties shall be performed in accordance with the provisions of MnDOT Specification Section 1507, and supplemented as follows

All utilities that relate to this Project are classified as "Level D," unless the Plans specifically state otherwise. This utility quality level was determined according to the guidelines of CI/ASCE 38-02, entitled "Standard Guidelines for the Collection and depiction of existing subsurface utility data."

The following utility owners have existing facilities that may be affected by the work under this Contract, all of which they intend where necessary to relocate, adjust or replace in advance of or concurrently with the Contractor's operations.

- CenterPoint Energy
- Century Link
- City of St. Louis Park – Communication
- Comcast
- US Internet
- Verizon
- Xcel Energy
- Zayo

The City utilities that are affected such as storm sewer, sanitary sewer, and water supply have been included in the Plan for adjustment or relocation.

The City's Contractor shall coordinate their work and cooperate with the foregoing utility owners and their forces in a manner consistent with the provisions of MnDOT Specification Section 1507 and the applicable provisions of MnDOT Specification Section 1505.

### 203.17.2 INTERFERENCE WITH OTHER UTILITIES

Prior to starting work, the Contractor shall determine the existence of all gas mains, water lines, telephone, electrical conduits, and other public or private utilities which may interfere with any work under this contract. No responsibility is assumed by the City or the Engineer for the accuracy of the location of utility lines as indicated on any of the plans. The sizes, locations and depths of all utilities and structures as shown on the plans and profiles are approximate only and the Contractor shall satisfy him/ her self as to the accuracy of the information given.

During the design process, the City has notified public and private utilities, to the extent known to the City, that the utility's properties must be removed or relocated to complete the Project. However, the City makes no expressed or implied warranty, guarantee,

promise, or representation to bidders or to the Contractor that the utility owners will adjust, remove, or relocate their properties prior to the commencement of construction operations or in sufficient time or manner to prevent interference with the Contractor's operations. Contractor shall not be entitled to any additional compensation for claimed delays or inefficiencies of operations relating to utility adjustments, removals or relocations.

The Contractor is to exercise care in crossing any existing utility lines and is responsible for any damage. The Contractor will assume all responsibility to the utility company for any expense incurred by them to protect, relocate, or maintain their operation during the time the work is in progress, but to the extent only that the City and the Contractor are legally obligated to reimburse such expense.

#### 203.17.3 GOPHER STATE ONE CALL

Any excavation in the city requires notification to Gopher State One-Call at least 48 hours prior to the excavation start time and the use of white markings of the proposed excavation area.

Gopher State One-Call 651-454-0002

The Contractor shall conform to the requirements of MnDOT Specifications 1507 "Utility, Property and Service" in respect to protecting all underground utilities, except as modified in this section. Further, the Contractor shall cooperate with the utility companies in all their work and shall be particularly cautious in its backfilling operations adjacent to and under exposed utilities and services to prevent settlement of same.

#### 203.17.4 CLAIMS FOR COMPENSATION FOR UTILITY RELOCATION OR REPAIR

The Contractor shall not claim or be entitled to receive compensation for any damage sustained by reason of the inaccuracy of or the omission of any of the information given on the drawings, or by reason of failure to properly protect at the Contractor's own expense, streets, alleys, or public structures which are damaged or injured in any way by the Contractor's acts, and shall be responsible for all damages to other utilities that may be encountered.

#### 203.17.5 ACCESS TO HYDRANTS AND UTILITIES

At all shaft sites and on all open cut work, the Contractor shall provide and maintain free access to fire hydrants, water and gas valves, manholes, and similar facilities. Gutters and waterways shall be kept open or other satisfactory provisions made for the removal of storm water.

#### 203.18 SUBCONTRACTORS

The Contractor shall, as soon as practicable after the signature of the contract, notify the Engineer in writing the names of subcontractors, if any, proposed for the principal parts of the work and the Contractor shall not employ any that the Engineer may within a reasonable time object to as incompetent or unfit.

By an appropriate agreement, 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 the terms of the contract documents, and to assume toward the Contractor all the

obligations and responsibilities which the Contractor, by these documents, assumes toward the City. Said agreement shall preserve and protect the rights of the City under the contract documents with respect to the work to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each subcontractor to enter into similar agreements with his sub-subcontractors. The Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the contract documents to which the subcontractor will be bound by this paragraph, and identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the contract documents. Each subcontractor shall similarly make copies of such documents available to his sub-subcontractors.

Nothing in this section shall create obligation on the part of the City to pay, or see to, the payment of any sums to any subcontractors and relation between any subcontractor and the City.

**203.19 INSPECTIONS**

The Contractor shall maintain an adequate inspection system and perform such inspection as will assure that the work performed under the contract conforms to contract requirements, and maintain and make available to the City adequate records of such inspections.

**204.0 MISCELLANEOUS PROVISIONS**

**204.1 SUCCESSORS AND ASSIGNS**

The Contractor is bound jointly and severally, together with successors, executors, administrators, and assigns to the City in respect to all covenants of this Agreement, except that the Contractor shall not assign or transfer any part of the Contractor's interest in this Agreement, or sublet as a whole, nor shall the Contractor assign any monies due, or to become due, without the City's written consent.

**204.2 WRITTEN NOTICE**

Notice shall be properly given to the Contractor by registered mail to the address given on the proposal, or by delivery to a designated representative. Notice to the City must be delivered or sent by registered mail to the Engineering Director.

**204.3 PROPOSAL PACKAGES**

MnDOT 1203 is hereby deleted from the MnDOT Standard Specifications.

MnDOT 1206.1 is hereby deleted from the MnDOT Standard Specifications.

MnDOT 1206.2 is hereby deleted from the MnDOT Standard Specifications.

**204.4 CONTRACTOR'S BONDING**

Within ten (10) days after notice of acceptance of bid, the Contractor shall execute and deliver to the City:

- a) A performance bond for the use and benefit of the City to complete the contract according to its terms, and conditioned on saving the City harmless from all costs and charges that may accrue on account of completing the specified work; and

- b) A payment bond for the use and benefit of all persons furnishing labor and materials engaged under, or to perform the contract, conditioned for the payment, as they become due, of all just claims for the labor and materials.

The performance bond and the payment bond must be executed by a surety company authorized to do business in the State of Minnesota, on the forms provided by the City, each in a sum equal to the contract price.

**204.5 STOPPING THE WORK**

If the Contractor fails to correct defective work as required by Section 210 or persistently fails to carry out the work in accordance with the contract documents, the City, by a written order signed personally or by an agent specifically so empowered by the City in writing, may order the Contractor to stop the work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the City to stop the work shall not give rise to any duty on the part of the City to exercise this right for the benefit of the Contractor or any other person or entity.

**204.6 CITY'S RIGHT TO CARRY OUT THE WORK**

If the Contractor should default or neglect to prosecute the work properly, or fail to perform any provision of the contract, the City, after three (3) days written notice to the Contractor, may without prejudice to any other remedy the City may have, make good such deficiencies and charge the resulting damages to the Contractor, provided, however, that the Engineer shall approve both such action and the amount charged to the Contractor.

**204.7 ROYALTIES AND PATENTS**

The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent fights, and shall save the City harmless for loss on account thereof, except such claims of suits arising by reason of patent infringement of authorized use of patented processes where such is the direct result of specification requirements but if the Contractor has information that the process or articles specified is an infringement of a patent, the Contractor shall be responsible for such loss unless they promptly gives such information to the Engineer or the City.

**204.8 TESTS**

If the contract documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any work to be inspected, tested or approved, the Contractor shall give the Engineer timely notice of its readiness and of the date arranged so the Engineer may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests and approvals unless otherwise provided.

If after the commencement of the work the Engineer determines that any work requires other special inspection, testing or approval, the Engineer will, upon written authorization from the owner, instruct the Contractor to order such special inspection, testing or approval. If such special inspection or testing reveals a failure of the work to comply with;

- a) the requirements of the contract documents, or
- b) respect to the performance of the work, with laws, ordinances, rules, regulations or orders of any public authority having jurisdiction,



the Contractor shall bear all costs, including the Engineer's additional services made necessary by such failure; otherwise the Owner shall bear such costs, and an appropriate change order shall be issued.

Neither the observations of the Engineer in the administration of the construction contract, nor inspections, tests or approvals by persons other than the Contractor shall relieve the Contractor from obligations to perform the work in accordance with the contract documents.

**204.9 NON-DISCRIMINATORY PRACTICES**

The Contractor agrees during the life of this contract not to discriminate against any employee or applicant for employment because of race, color, sex, creed, national origin, or age, or on any other basis prohibited by Federal, State, or local law. The Contractor will include a similar provision in all subcontracts entered into for the performance of this contract. This contract may be canceled or terminated by the City, and all money due or to become due hereunder may be forfeited for a second or subsequent violation of the terms or conditions of this section. This section is inserted in this contract in accordance with Minnesota Statutes Section 181.59.

**204.10 AFFIRMATIVE ACTION**

The Contractor recognizes that the City is an equal opportunity employer and agrees during the life of this contract to take affirmative action to provide equal employment opportunity without regard to race, creed, color, national origin, age or sex.

**204.11 LIQUIDATED DAMAGES FOR DELAY**

The Contractor guarantees that the work can and will be completed within the time limit stated in the agreement, or within the time as extended as provided elsewhere in the contract documents. It is agreed that in the event that the Contractor fails to complete the contract within the stipulated time, the Contractor will pay to the City the sum fixed in the construction agreement for each calendar day, Sundays and holidays included, by which the Contractor shall fail to complete the work or any part of it, for liquidated damages and not as a penalty.

In the event that the City can establish that its actual damages sustained by the Contractor's failure to complete the contract within the time stated in the agreement exceed two times the liquidated damages applicable under the contract, the City may then recover from the Contractor its actual damages sustained.

The Contractor acknowledges the necessity of the above stipulation for liquidated damages, since damages for the breach of this Agreement are in their nature difficult of exact ascertainment, and acknowledges that the amount fixed as liquidated damages appears to be reasonable. The City will deduct and retain out of any money due or become due hereunder the amount of liquidated damages incurred and in case those amounts are less than the amounts of liquidated damages the Contractor shall be liable to pay the difference upon demand. Delay in completion shall be apportioned with an allowance to the Contractor for any delay that is caused by the City, as a credit on the liquidated damages sum due to the City.

The provisions of this section are applicable to delay occurring after abandonment of the work by the Contractor and notwithstanding the fact the City or a competing Contractor for the City or the surety may take over the job and complete it.

**204.12 NO WAIVER OF RIGHTS**

Neither observations of work by the Owner or any of their officials, employees, or agents, nor final certificate, delay occurring after abandonment of the work by the Contractor and before arranging for completion of the contract, nor any order by the Owner or Engineer for payment of money, nor any payment for, or acceptance of, the whole or any part of the work by the Owner or Engineer, nor any extension of time, nor any possession taken by the Owner or its employees, shall operate as a waiver of any provision of this contract, or of any power reserved to the Owner, or of any right to damages, nor shall any waiver of any breach in this contract be held to be a waiver of any other or subsequent breach. It is intended that the Contractor shall be responsible for work not in accordance with the contract documents or for faulty material or workmanship, and shall remedy any defects and pay for any resulting damages. This obligation shall survive termination of the contract.

**204.13 RIGHT AND REMEDIES**

The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

**204.14 MEDIATION**

Prior to the commencement of any legal proceedings relating to a claim or controversy arising out of or relating to this contract, the parties will engage in good faith mediation in an effort to resolve the dispute.

**204.15 RESPONSIBLE CONTRACTOR**

In accordance with Laws of Minnesota, 2014, chapter 253 (Minnesota Statutes §16C.285), Bidders are hereby advised that the Owner cannot award a construction contract in excess of \$50,000 unless the contractor is a "responsible contractor" as defined in Minnesota Statutes §16C.285, subdivision 3. A bidder submitting a Proposal for this Project must verify that it meets the minimum criteria specified in Minnesota Statutes §16C.285, subdivision 3, by completing the Responsible Contractor Certificate within this Proposal. Statements in the certificate must be certified by a company officer. Bidders are responsible for obtaining verifications of compliance from all subcontractors, using a form provided by the Owner. A bidder must submit signed verifications from subcontractors upon the Owner's request.

A Bidder or subcontractor who does not meet the minimum criteria established in Minnesota Statutes §16C.285, subdivision 3, or who fails to verify compliance with the minimum requirements, will not be a "responsible contractor" and will be ineligible to be awarded the Contract for this Project or to work on this Project. Bidders and subcontractors are also advised that making a false statement verifying compliance with any of the minimum criteria will render the Bidder or subcontractor ineligible to be

awarded a construction contract for this Project and may result in the termination of a contract awarded to a Bidder or subcontractor that makes a false statement.

**204.16 DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

On Contracts with Disadvantaged Business Enterprise (DBE), the Contractor's organization shall perform Work amounting to not less than 30 percent of the total original Contract Amount. The Owner will deduct specialty items from the total original Contract Amount before calculating the amount of Work that the Contractor shall perform.

**205.0 CONTRACT TIME**

Residents and business owners are aware of this project and have an expectation of the duration and impacts associated with this project. As such the completion date of this project will be adhered to and liquidated damages will apply if the contract is not completed on time. All time limits stated in the contract documents are of the essence to the contract.

**205.1 DELAYS AND EXTENSIONS OF TIME**

The Contractor is expected to appropriately determine delivery dates for all supplies, materials, and equipment before submission of a bid. Delays in such deliveries ordinarily will not be grounds for extension of the contract completion date.

If the Contractor be delayed at any time in the progress of the work by any act or neglect of the Engineer or Project Representative, or by another Contractor employed by the City, or by changes ordered in the work, or by labor disputes, fire, unusual delay in transportation, or other causes beyond the Contractor's control, or by any other cause which the Engineer shall decide to justify the delay, then the time of completion shall be appropriately extended by change order.

Temporary delays and/or work stoppages due to rain, snow or otherwise inclement weather shall not be considered as sufficient cause for extensions of time, except in cases of abnormally inclement weather.

In the event that the project is involved in environmental review procedures, such as the preparation of an environmental assessment or an environmental impact statement, such procedures shall be grounds for an extension in the completion date.

No such extension shall be made for delay commencing more than seven (7) days before claim is made in writing to the Engineer; otherwise it shall be waived. The recovery of sums in excess of the contract price for delay shall be in accordance with Section 209.0.

Extensions in the contract time, shall be by change order in accordance with Section 209.0.

**205.2 WORK HOURS**

The Contractor shall notify the Owner in advance of all times when people and equipment will work on this contract. In accordance with City ordinances, no work on this project shall take place between the hours of 8 p.m. and 7 a.m. on any weekday or between the hours of 8 p.m. to 9 a.m. on any weekend or legal holiday unless permission has been granted by the Owner.

**206.0 PAYMENTS AND COMPLETION**

**206.1 PROGRESS PAYMENT**

Progress payments are authorized under this contract. Unless payments are withheld by the City for reasons elsewhere stated in this contract, payment will be made at least once a month on a basis of ninety-five percent of the work done, provided the work is progressing to the satisfaction of the Engineer and Contractor provides Engineer with all necessary documentation of work completed. The City reserves the right in all cases to exercise its discretion as to the acceptance or rejection of any assignment or order of payment.

**206.2 RETAINAGE**

Each progress payment will have five (5) percent retained.

**206.3 MATERIAL ON HAND**

Monthly estimates may include the value of acceptable materials required in the construction, which have been delivered on the job site, and for which acceptable provisions have been made for their preservation and storage. From the total value of the materials so reported, five (5) percent will be retained. These materials when paid for by the City, shall become the property of the City, and in the event of default on the part of the Contractor, the City may use or cause to be used such materials in the construction of the work provided for in the contract. The amount paid by the City for materials shall go to reduce the estimates due the Contractor as the material is used in the work.

**206.4 SUBCONTRACTOR PAYMENT**

In accordance with Minnesota Statutes 471.425, Subd 4a, the Contractor shall pay any subcontractor within ten (10) days of the Contractor's receipt of payment by the City for undisputed services provided by the subcontractor. If the Contractor fails within that time to pay the subcontractor any undisputed amount for which the Contractor has received payment by the City, the Contractor shall pay interest to the subcontractor on the unpaid amount at the rate of 1-1/2 percent per month or any part of a month. 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 interest penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from the Contractor shall be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action. The Contractor shall, by an appropriate agreement with each subcontractor, require each subcontractor to make payments to his sub-contractors in similar manner.

**206.5 MATERIALS FREE OF ENCUMBRANCES**

The Contractor warrants and guarantees that title to all work, materials, and equipment covered by a Certificate for Payment whether incorporated in the project or not, will pass to the City upon receipt of such payment by the Contractor, free and clear of all liens, claims, security interests or encumbrances, referred to in this Section 6 as "liens"; and that no work, materials or equipment covered by a Certificate for Payment will have been acquired by the Contractor, or by any other person performing the work at the site or furnishing materials and equipment for the project, subject to an agreement under which

an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

**206.6 CERTIFICATE FOR PAYMENT**

The Engineer shall, not later than the date when each payment falls due, issue to the Contractor a certificate for such amount as is decided to be properly due.

**206.7 PAYMENTS WITHHELD**

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

- a) Defective work not remedied.
- b) Third party claims for labor or materials furnished the Contractor or subcontractor, or reasonable evidence indicating probable filing of such claims.
- c) Failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment.
- d) A reasonable evidence that the contract cannot be completed for the balance then unpaid.
- e) Evidence of damage to the property of another.
- f) Liquidated damages accrued either because the Contractor has not completed the work within the contract time or because it reasonably appears that the work will not be completed within the contract time, or
- g) Unsatisfactory prosecution of the work by the Contractor.

**206.8 FINAL PAYMENT**

Upon receipt of written notice that the work is ready for final inspection and acceptance, the Engineer will promptly make an inspection and, when the work is deemed acceptable under the contract documents and the contract fully performed, a final certificate for payment will be issued, stating that to the best of the Engineer's knowledge, information and belief, and on the basis of observations and inspections, the work has been completed in accordance with the 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.

Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Engineer

- a) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the work have been paid or otherwise satisfied (Sworn Construction Statement and IC-134 Withholding Affidavit for Contractors), and
- b) if required by the City, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers or liens arising out of the contract, to the extent and in such form as may be designated by the City included in the contract specifications.

Final acceptance of the work shall be made by resolution of the City Council or by certificate of acceptance by the City Manager accepting the work and authorizing final payment. The date of adoption of such resolution or certificate shall be the date of

completion under Minnesota Statutes Section 574.31, and other sections thereof dealing with public contractor bonds, and shall be the date of completion as provided for in the special provisions of this contract and, for the commencement of the period of any express warranty or guarantee of the Contractor. Neither the final certificate for payment, the City Council resolution or the Manager Certificate authorizing acceptance and final payment, nor any other provision of the contract documents, shall relieve the Contractor of responsibility for faulty material or workmanship. The Contractor shall remedy any defects due thereto and pay for any damage to other work resulting therefrom as per the provisions of Section 203.6.

**207.0 INSURANCE**

**207.1 CONTRACTOR'S LIABILITY INSURANCE**

During the term of this contract, the Contractor shall maintain such insurance with an insurance carrier licensed to do business in the State of Minnesota as will protect it from claims which may arise out of or result from the Contractor's operations or completed operations under the contract, whether such operations be by the Contractor or by a subcontractor or sub-subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be held liable. This insurance shall cover:

- a) claims arising under any worker's compensation, employer's liability, or any similar employee benefit acts. Such insurance shall be written for amounts not less than the following;

Worker's Compensation and Employers Liability	Statutory Limits \$100,000 Each Accident \$100,000 Each Disease \$500,000 Policy Limit
--	---

- b) claims because of bodily injury, sickness, disease or death of any person or persons, and for claims because of damage to or destruction of property of others, including loss of use. Such insurance shall be written for both general liability and automobile liability amounts not less than the following;

General Liability:	
Bodily Injury and Property Damage	\$1,000,000 Each Occurrence
Personal & Advertising Injury	\$1,000,000
Products Completed Operations	\$2,000,000 Aggregate
Policy Aggregate	\$2,000,000 Annual Aggregate
Auto Liability:	
Scheduled Autos	\$1,000,000 combined single limit

(If no scheduled autos Hired & Non-Owned Auto Liability shall be provided at the limit shown above.)

Excess or Umbrella Liability coverage shall be in place:	
Each Occurrence	\$3,000,000
Annual Aggregate	\$3,000,000

The insurance referred to in subparagraph (b) above shall be written under the Commercial General and Commercial Automobile Liability policy forms, including coverage for all owned, hired, and non-owned automobiles and for premises, operations liability, products, completed operations liability and contractual liability to cover the indemnification clause under Section 207.6 of this contract. The Contractor may at its option provide the limits of liability as set out below by a combination of the above described policy forms, and an umbrella excess liability policy.

It is a condition of the contract that the policy or policies afford coverage for damage to property of others arising out of the perils of Explosion, Collapse, and Damage to Underground Facilities.

The policy or policies shall afford the same limits of liability as set out above for liability assumed under contract, including the indemnification liability set out in Section 207.7 of this contract.

It is a condition of the contract that the policy or policies waive any and all governmental immunity as a defense in any action brought against the insured or any other party to the contract.

The Contractor shall provide insurance to cover operating hazards during the period of placing the facilities in operation and during any testing, and until such time as the facilities are completed and accepted for operation by the City, written notice of that fact has been issued by the City, and shall be in place for at least 3 years after completion.

Approval of the insurance by the City shall not in any way relieve or decrease the liability of the Contractor hereunder, and it is expressly understood that the City or the Engineer do not in any way represent that the above specified insurance or limits of liability are sufficient or adequate to protect the Contractor's interests or liabilities.

#### 207.2 **PROPERTY INSURANCE**

All responsibility for maintenance of property insurance on the work remains solely with the Contractor who may at its option insure against any other perils, and such responsibility shall remain with the Contractor until such time as the work is complete and accepted in writing by the City. It is a condition of the contract that the City and Engineer and all contractors, subcontractors, and sub-subcontractors waive all rights of recovery against each other for damages caused by perils to the extent covered by any valid and collectible insurance, and further, that any policy not including the standard waiver of subrogation clause be so endorsed as to comply with this section.

#### 207.3 **NOTICE**

The City shall be given at least 30 days prior written notice of cancellation, termination or material modification of the required insurance coverages.

#### 207.4 **DEDUCTIBLES**

All responsibility for payment of any sums resulting from any deductible provision, corridor, or self-insured retention conditions of the policy or policies shall remain with the Contractor.

**207.5 CERTIFICATE OF INSURANCE**

The insuring company shall deliver to the City certificates of all insurance required on a form specified by the City Clerk, signed by an authorized representative and stating that all provisions of the specified requirements are satisfied. The certificate will name the City of St. Louis Park as Additional Insured. We require waiver of subrogation in favor of the City. Also, coverage shall be primary and non-contributory, and shall include a 30 day notice of cancellation. The certificates shall be submitted directly to the Engineer for review. The Contractor shall not begin any work until the City has reviewed and approved the insurance certificates and has so notified the Contractor directly in writing. Any notice to proceed that is issued shall be subject to such approval by the City.

**207.6 ERRORS AND OMISSIONS INSURANCE**

Any insurance agent for coverage required by this contract shall have in force and effect errors and omissions coverage in limits of not less than \$1,000,000 per occurrence and \$1,000,000 aggregate.

**207.7 INDEMNIFICATION**

The Contractor shall indemnify and hold harmless the City and the Engineer and their agents and employees from and against all claims, damages, losses and expenses, including attorneys' fees, which they may suffer or for which they may be held liable because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damage to property, including loss of use thereof, in consequence of the performance or non-performance of the work by the Contractor, its employees, agents or subcontractors.

**208.0 CHANGES IN THE WORK**

**208.1 CHANGE ORDERS**

The Contractor must notify the City Project Coordinator and the City Project Engineer by email prior to starting work that the contractor believes is beyond the original scope of the project (extra work). If the contractor believes that they are entitled to extending the contract time – the request must be submitted prior to starting the extra work. The City will not be responsible for payment for additional work or for additional contract time if the City was not properly notified and the extra work documentation is not submitted within 15 calendar days of the extra work being complete.

The City to the extent authorized by law, may order extra work or make changes by altering, adding to, or deducting from the work without invalidating the contract, and the contract will be adjusted accordingly. No such order for extra work or change shall be valid unless authorized by official action of the Owner, and communicated to the Contractor in writing. All such work shall be executed under the conditions of the original contract, except that any claims for extension of time caused thereby shall be adjusted at the time of ordering such a change.



In giving instructions, the Engineer shall have authority to make minor changes in the work not involving extra cost, and not inconsistent with the purposes of the installation, but the contract sum and the contract time can be changed only by change order.

## 208.2 DETERMINATION OF ADJUSTMENT

The amount of an adjustment to the contract sum for any additional, omitted or changed work shall be determined in one or more of the following ways:

- a) By a lump sum price agreed upon prior to starting the additional or changed work.
- b) By unit prices named in the proposal or as agreed upon prior to starting the additional or changed work.
- c) By cost plus a fixed fee, the latter agreed upon prior to starting the additional or changed work.
- d) By cost plus percentage.

"Cost", in methods (c) and (d) shall include all labor, materials, power, fuel, and rental on major items of equipment. The Contractor shall keep and present a correct account of the several items of cost together with vouchers. This definition and requirement applies equally to work done by subcontractors.

If none of the above methods is agreed upon, the Contractor, after receiving an order as above, shall proceed with the work. In such case, they shall keep and present, in such forms as the Engineer may direct, a correct amount of the net cost of labor and materials, together with vouchers. In that case, the Engineer shall certify a reasonable value of such labor and materials, and reasonable allowance shall be made by him for overhead and profit due to the Contractor.

Changed work shall be adjusted considering separately the parts of the work added and the parts omitted. Amount of adjustment for parts omitted shall be estimated at the time omission of work is authorized and the agreed adjustment will be deducted from subsequent monthly estimates.

Statements for additional or changed work shall be rendered by the Contractor not later than 15 days after the completion of each assignment of additional or changed work and if found correct will be approved by the Engineer and submitted for payment with the next regular monthly estimate.

The Owner reserves the right to contract with any person or firm other than the Contractor for any or all extra work. The Contractor's attention is especially called to the fact that they shall be entitled to no claim for damages or anticipated profits on any portion of the work that may be omitted.

In unit price contracts, a change to the scope of the work that results in a final contract price that is between 80 and 120 percent of the original estimated contract price shall not be considered additional, omitted or changed work and the Contractor shall be paid at the contract unit price amount. Amounts of individual items may be varied to any extent and individual items may be omitted entirely as long as the above limits are met. In the event that the total quantity of work is adjusted upward or downward beyond the above limits, that portion of the work beyond said limits may be performed at the original

contract unit prices if agreed by the Owner and the Contractor, or otherwise, shall be handled in accordance with the provisions stated previously in this section.

Where the value of omitted work is not covered by applicable unit prices, the Engineer shall determine on an equitable basis the amount of

- a) credit due the Owner for contract work not done as a result of an authorized change,
- b) allowance to the Contractor for any actual loss incurred in connection with the purchase, delivery and subsequent disposal of materials or equipment required for use on the work as planned and which could not be used in any part of the work as actually built, and
- c) any other adjustment of the contract amount where the method to be used in making such adjustment is not clearly defined in the contract documents.
- d) Unless otherwise agreed upon by the Owner and the Contractor, the credit due the Owner for omitted work shall be the "cost" as defined above of the omitted work plus an overhead allowance of:
- e) Ten (10) percent of the "cost" if the work was to have been done by the Contractor's own forces. or:
- f) Fifteen (15) percent of the "cost" if the work was to have been done by a subcontractor.

### 208.3 **CLAIMS FOR ADDITIONAL COST**

If the Contractor requests to make a claim for an increase in the contract price, whether because of any instructions, latent conditions, delay or otherwise, they shall give notice in writing within ten days after the occurrence of the event giving rise to the claim. The notice shall be given by the Contractor before proceeding to execute the work, except in an emergency endangering life or property, and the procedure shall then be as provided for changes in the work. Claims made after this time, or not made in writing, will be refused and no claim shall be valid unless so made. Any change in the contract sum resulting from such claim shall be authorized by change order and shall be performed and compensated for under the terms of the original contract unless expressly provided otherwise.

### 208.4 **(1903) COMPENSATION FOR ALTERED QUANTITIES**

The provisions of MnDOT 1903 are modified as follows:

The Contract is established as a unit-price contract. Payment shall be made based upon actual work as measured in the field and shall be considered as compensation in full for work acceptably completed. The City reserves the right to increase, reduce, or delete any bid items after award of the contract. No adjustments will be made to the unit prices bid on the Contract for any items because of any increases, reduction or deletion.

### 208.5 **(1905) ELIMINATION OF WORK**

The provisions of MnDOT 1905 are modified as follows:

The Contract is established as a unit-price contract. Payment shall be made based upon actual work as measured in the field and shall be considered as compensation in full for

work acceptably completed. The City reserves the right to increase, reduce, or delete any bid items after award of the contract. No adjustments will be made to the unit prices bid on the Contract for any items because of any increases, reduction or deletion.

## **209.0 UNCOVERING AND CORRECTION OF WORK**

### **209.1 UNCOVERING OF WORK**

If any work should be covered without approval or contrary to the request of the Engineer, it must, if required by the Engineer, be uncovered for his observation and replaced, at the Contractor's expense.

Re-examination of questioned work may be ordered by the Engineer, and if so ordered, the work must be uncovered by the Contractor. If such work be found in accordance with the contract documents, the City shall pay the cost of re-examination and replacement. If such work be found not in accordance with the contract documents, the Contractor shall pay such cost.

### **209.2 CORRECTION OF WORK**

The Contractor shall promptly correct all work rejected by the Engineer as defective or as failing to conform to the contract documents whether observed before or after substantial completion and whether or not fabricated, installed or completed. The Contractor shall bear all cost of correcting such rejected work, including the cost of the Engineer's additional services.

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

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

The Contractor shall remedy any defects due to faulty materials or correct rejected workmanship and pay for any damage to other work resulting therefrom. Neither any provision in the contract documents, nor any special guarantee time limit, shall be held to limit the Contractor's liability for defects, to less than the legal limit of liability. The City shall give notice of observed defects with reasonable promptness. All questions arising under this article shall be decided upon by the Engineer, notwithstanding final payment.

## **210.0 TERMINATION OF THE CONTRACT**

### **210.1 RIGHT OF THE CITY TO TERMINATE**

If the Contractor is:

- a) adjudged bankrupt, or if
- b) a general assignment is made for the benefit of creditors, or if
- c) a receiver is appointed on account of insolvency, or if
- d) the Contractor persistently or repeatedly refuses or fails to supply enough properly skilled workmen or proper materials, or if
- e) prompt payment is not made to subcontractors or for materials or labor, or
- f) persistently disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, or
- g) fails to prosecute the work as to endanger performance of this Agreement in accordance with its terms, or
- h) otherwise is guilty of a substantial violation of a provision of the contract documents,

then the City, upon certificate of the Engineer that sufficient cause exists to justify such action, may without prejudice to any other right or remedy terminate the employment of the Contractor.

**210.2 NOTICE**

In the event of termination, a seven (7) day written notice will be given to the Contractor and the surety on the bond. After seven days have elapsed, the City will take possession of the premises and of all materials, equipment, tools, construction equipment, and machinery thereon owned by the Contractor and may finish the work by whatever method the City may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished.

**210.3 UNPAID BALANCE**

If the unpaid balance of the contract price shall exceed the expense of finishing the work, including compensation for additional engineering, managerial, legal and administrative services, such excess shall be paid to the Contractor. If such expenses shall exceed such unpaid balance, the Contractor shall pay the difference to the City. The Engineer shall certify the amount to be paid to the City or to the Contractor, as the case may be, in the manner provided in Section 206.6, and this obligation for payment shall survive the termination of the contract.

**211.0 PROTECTION OF PERSONS AND PROPERTY**

**211.1 (1714) RESPONSIBILITY FOR DAMAGE CLAIMS**

The provisions of MnDOT 1714 are supplemented and/or modified with the following:

The City will forward all claims submitted by residents, private utilities, or others against the Contractor for damage to property or utilities resulting from the Contractor's work and/or negligence directly to the Contractor's insurance company for review and processing.

**211.2 SAFETY OF PERSONS AND PROPERTY**

The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury, or loss to:

- a) All employees on the work and all other persons who may be affected.

- b) All the work and all materials and equipment to be incorporated whether in storage on or off the site, under the care, custody or control of the Contractor or any of his subcontractors.
- c) Other property at the site or adjacent to the site, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of construction.

**211.3 APPLICABLE LAWS**

The Contractor shall comply with all applicable law, ordinances, rules, regulations, and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. The Contractor shall be responsible for compliance of his subcontractors with the same applicable requirements. The Contractor shall indemnify and hold harmless the City and the Engineer and their agents and employees from and against any costs, fines, or penalties sustained by the City for alleged violations by the Contractor or any subcontractor of the Occupational Safety and Health Act, as amended.

**211.4 DAMAGE OR LOSS**

All damage or loss to any property referred to in this section caused in whole or in part by any Contractor, any subcontractor, any sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor involved, and shall not be grounds for a claim against the City except to the extent that such damage or loss resulted from wrongful acts or omissions of agents or employees of the City.

**211.5 (1404) MAINTENANCE OF TRAFFIC AND (1710) TRAFFIC CONTROL DEVICES**

Traffic shall be maintained and controlled in accordance with the special provisions of this contract, the provisions of MnDOT Specifications 1404 and 1710, the Minnesota Manual on Traffic Control Devices (MMUTCD) and other applicable laws and regulations.

**211.6 (1718) FURNISHING RIGHT OF WAY**

The provisions of MnDOT 1718 are supplemented with the following:

All work associated with the project shall be restricted to the City right-of-way and easements unless otherwise directed. The City is obtaining temporary right of entries from property owners in locations shown in the plans. No work or other construction related activities shall occur outside of the existing Right of Way in these locations without a signed right of entry agreement from the property owner.

The Contractor will be solely responsible for all fines/penalties/damages and the restoration or other items required by the various regulatory agencies and/or property owners as a result of any encroachments beyond the staked work zone limits.

**211.7 PROTECTION AND RESTORATION OF PROPERTY**

The Contractor shall take whatever steps are necessary to protect adjoining properties and structures from hazards in connection with its performance of the work. The Contractor shall be responsible for all damages to properties and structures that occur as a result of its operations.

In the event the Contractor does not restore such property or otherwise provide compensation for damage, the Engineer may, upon forty-eight hours written notice, proceed to repair, rebuild, or otherwise restore such property as necessary. The cost of repair will be deducted from monies due to the Contractor under this contract.

**211.8 PROTECTION OF IMPROVEMENTS**

The Contractor shall be entirely responsible for the protection of all improvements such as walls, sidewalks and curbing that are not designated by the Engineer to be removed for proper construction of the project.

**211.9 PROTECTION OF TREES**

No trees shall be cut except upon the specific authority of the Engineer. Trees adjacent to the work shall be protected from all damage by the construction operations. Extreme care shall be taken not to operate heavy machinery within the drip line area of trees nor to place or stockpile material within the dripline area of trees. Adequate tree protection shall be provided as shown on the plans. This protection shall be incidental and no payment shall be made therefore.

**211.10 PRIVATE SYSTEMS WITHIN THE RIGHT OF WAY**

Private property owners may have existing irrigation systems and/or invisible fence within the right of way. Residents who mark the existing sprinkler system or invisible fence are providing information to the Contractor on where the existing systems are located. The Contractor shall minimize any damage of private utility systems within the right of way and should try to save as much of the private system as possible. The property owner must be informed of any damage to their irrigation or invisible fence system. The adjacent property owner is responsible for any damage to private systems which are located within the right of way.

Any damage to private systems beyond the right of way shall be paid for by the Contractor unless the Contractor was directed to work outside of the right of way by the Engineer. If the work was directed by the Engineer and no pay items exist for the repair of the private system, repairs shall be made by the Contractor and reimbursed by the Engineer on a time and material basis.

**212.0 COORDINATION WITH SERVICE PROVIDERS**

The Contractor shall coordinate with the postal service, recycling service, garbage collection service, etc. to maintain continual uninterrupted service to all residences and businesses throughout the duration of the project.

The Contractor shall temporarily relocate mailboxes if needed, haul recycling and garbage for residents to a designated pick up location, etc., as required by the subject service provider. During construction, if access is limited, and garbage trucks cannot pick up at the driveways, the Contractor is required to collect the garbage and recycling containers from the curbs of the existing homes and place them in a designated location for pick-up by the garbage hauler. Containers should be marked with the corresponding address to ensure the return of the container to the proper location. The Contractor will return the garbage and recycling containers to the curb of the existing homes at the end of the day.

The Contractor shall coordinate the designated pick-up location with the various garbage companies prior to the start of construction.

All equipment materials and labor required to coordinate with service providers and maintain services shall be incidental to the Contract.

**213.0 (1707) PUBLIC CONVENIENCE AND SAFETY**

Any work done shall be in coordination with the school buses using the roads. The Contractor shall make all roads passable to the buses and shall coordinate work with school hours.

Work shall be staged/scheduled to minimize the disruption to bus schedules. The Contractor and all employees shall be aware of school children walking to/from bus stops and school. They will ensure safe passage to these children and shall assist them if needed to cross streets or walk around equipment and trenches. This assistance includes, but is not limited to, helping them cross the streets while pedestrian ramps or gate valves are under construction; stopping work to allow them to walk around an active work area; and directing them around hot bituminous areas. The Contractor shall be responsible for coordinating work with the ISD 283 School District.

**214.0 HAUL ROADS**

The Contractor shall be responsible for construction of all necessary temporary haul roads required to complete the required excavation and disposal. Construction of temporary haul roads shall also include placement of necessary granular material over existing bituminous roadway surfaces. This material shall be of sufficient depth to allow for protection of existing bituminous surfaces. Construction of necessary haul roads shall be considered an incidental item to other construction items and no direct compensation will be made therefore.

**215.0 RESTRICTIONS ON MOVEMENT OF HEAVY LOADS AND EQUIPMENT WEIGHT INFORMATION**

The Contractor shall require all trucks used for hauling bituminous mixture, aggregate, batched concrete and grading material (including borrow and excess) to have a Weight Information Card containing the tare weight and maximum allowable gross weight based on the number of axles, axle spacing and tire widths. This card shall be in the vehicle at all times and shall be made available to the Engineer upon request.

Said Weight Information Card shall identify the truck or tractor and trailer by license number, serial number or other acceptable identification approved by the Engineer and shall include the signature of the Owner.

No truck will be allowed to perform work on the project until the above requirements are fulfilled.