

GENERAL CONDITIONS

ARTICLE 1 TERM OF CONTRACT, OBLIGATIONS

- A. This Contract will be effective upon the later of the date set in the Special Conditions or upon execution and approval by both parties. This Contract will remain in effect until the Expiration Date set in the Special Conditions or until all obligations set forth in this Contract have been fulfilled.
- B. For delays encountered that are beyond ENGINEER's control, and upon written request from ENGINEER, the CITY's Authorized Agent may extend the Work Completion Date established in the Special Conditions of this Contract. The length of such time extension will be determined by the CITY's Authorized Agent.
- C. It will be ENGINEER's responsibility to reasonably notify CITY's Authorized Agent, in writing, if ENGINEER has reason to believe the project will not be completed as scheduled. CITY's Authorized Agent will have the authority to adjust the schedule and final cost associated with such delays, as provided in these General Conditions.
- D. Engineer shall furnish all materials, all necessary tools and equipment, and perform all work and labor necessary to determine Contractor's compliance with the construction of the Project consistent with City design specifications and consistent with the approved civil construction plans for the Project.
- E. CITY recognizes that ENGINEER provided services to the Owner under a City-Owner contract authorizing the construction of the public facilities for which construction inspection and observation services are being requested. CITY waives any and all conflict of interest rights against ENGINEER relative to this arrangement.

ARTICLE 2 GOVERNING LAW, JURISDICTION, AND VENUE

- A. This Contract shall be governed by and construed in accordance with the laws of the State of Minnesota. Venue for all legal proceedings arising out of this Contract will be in the applicable state or federal court with competent jurisdiction in Olmsted County and Minnesota respectively.

ARTICLE 3 TERMS OF GENERAL CONDITIONS

- A. Any and all provisions of these General Conditions will remain in force unless they are specifically and deliberately canceled or modified by the Special Conditions of this Contract.
- B. To the extent of any inconsistencies between the Special Conditions and these General Conditions, the Special Conditions will control. Minnesota Law supersedes any of the Special Conditions or General Conditions set forth in this Contract.

ARTICLE 4 TERMS OF PAYMENT

- A. Subject to the provisions of the Special Conditions, all services performed and deliverables satisfactorily supplied by ENGINEER pursuant to this Contract will be paid by CITY. Compensation will be in accordance with the Special Conditions, ARTICLE 3, "Consideration of Payment".
- B. If it appears at any time that ENGINEER will exceed the Total Contract Amount stated in the Special Conditions of this Contract, ENGINEER must notify CITY's Authorized Agent in writing in a timely manner. ENGINEER may not be compensated for work performed in excess of the Total Contract Amount without a written, and fully executed, amendment to the Contract. Any work performed beyond that identified in this Contract without a prior written amendment signed by CITY may be deemed voluntary and ENGINEER may not be entitled to compensation for the extra work.
- C. If ENGINEER claims any instructions, latent conditions, or other conditions exist that require extra cost under this Contract, ENGINEER must make claim for any extra cost incurred in writing within 20 Calendar days after such instruction or observance of conditions. Latent conditions are conditions not anticipated by the Special Conditions of this Contract. Any claim made after this time may be refused and no claim will be valid unless so made. Any work performed under an

amendment to this Contract that has not been properly approved and executed by the parties will be performed at ENGINEER's own risk.

- D. Reimbursement for travel and subsistence expenses actually and necessarily incurred by ENGINEER as a result of performance of this Contract must not exceed the amount defined in the Special Conditions. ENGINEER may be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current "Mn/DOT Travel Regulations", and identified in Special Conditions, Article 3.

ARTICLE 5 PROCEDURE FOR PAYMENT

- A. Payments will be made by CITY within 30 days of ENGINEER's presentation of properly prepared invoices and progress reports for services performed in accordance with this Contract. CITY shall notify ENGINEER in writing within 30 days of ENGINEER's presentation of invoices if they believe the progress reports were not properly prepared or the services were not properly performed in accordance with the Contract.
- B. Invoices for payment must be submitted by ENGINEER monthly to the CITY's Authorized Agent in the form prescribed by CITY. Invoices should identify the project and the cost for the services performed and delivered for the billing period and must satisfy the requirements listed below:
1. Each invoice must contain the following information: CITY contract invoice number (sequentially numbered), billing address if different from business address, and ENGINEER's original signature attesting that the invoiced services and costs are new and that no previous charge for those services and deliverables has been included in any prior invoice.
 2. The original of each invoice and progress report must be sent to the CITY's Authorized Agent for review and payment.
 3. Direct non-salary costs allocable to the work under this Contract, and defined in the Special Conditions of this Contract, must be itemized and supported with invoices or billing documents to show that such costs are properly allocable to the work. Direct non-salary costs are any costs that are not the salaried costs directly related to the work of the ENGINEER. Supporting documentation must be provided in a manner that corresponds to each direct cost.
 4. ENGINEER must provide, upon request of the CITY's Authorized Agent, the following supporting documentation:
 - a. Direct salary costs of employees' time directly chargeable for the services performed under this Contract. This must include a payroll cost breakdown identifying the name of the employee, classification, actual rate of pay, hours worked, and total payment for each invoice period; and
 - b. Signed time sheets or payroll cost breakdown for each employee listing dates and hours worked. Computer generated printouts of labor costs for the project must contain the project number, each employee's name, hourly rate, regular and overtime hours, and the dollar amount charged to the project for each pay period.
 5. ENGINEER must provide a copy of the invoice they forwarded to the city to the developer for informational purposes. This document should be clearly stated that it's for informational purposes only.
- C. If ENGINEER is authorized by CITY to use or uses any sub consultants, ENGINEER must include all the above supporting documentation in any sub consultant's Contract, and ENGINEER must comply with Minnesota Statutes Section 16A.1245, requiring timely payment by ENGINEER of sub consultant's, penalties for late payments, and defining costs the sub consultant must be awarded if the sub consultant prevails in a lawsuit.
- D. ENGINEER must require sub consultant's invoices to follow the same form and contain the same information as set forth above.

ARTICLE 6 CONDITIONS OF PAYMENT

- A. For all services and deliverables provided by ENGINEER under this Contract, the Engineer shall maintain its ethical and legal duty of a professional to exercise the level of care, diligence, and skill prescribed in the code of practice of his or her profession, or as other professionals in the same discipline would in the same or similar circumstances. The ENGINEER shall comply with the following:
1. All current applicable federal, state, and local laws, ordinances, rules, and regulations.
 2. All current state standards, policies, and practices required by applicable law to perform ENGINEER's services.

- B. ENGINEER will not receive payment for work performed in violation of federal, state, or local laws, ordinances, rules, or regulations.
- C. All deliverables covered by progress payments made by CITY will become the sole property of CITY. This provision must not be construed as relieving ENGINEER from sole responsibility for services and deliverables upon which payments have been made or the restoration of any damaged work or as waiving the right of CITY to require the fulfillment of all of the terms of this Contract. If the CITY uses the ENGINEER's deliverables in a manner beyond the scope of this contract, it shall indemnify ENGINEER for claims resulting from this reuse. The CITY grants ENGINEER a non-exclusive license, to the extent of the CITY's rights in such data, to use the ENGINEER Data for other purposes.
- D. Nothing in this Contract must be construed in any way to relieve ENGINEER from its obligation to complete the services and/or deliverables described in this Contract for a sum not to exceed that is set forth in the Special Conditions.
- E. ENGINEER is not authorized to direct the work of Contractor, unless City is given such authority, in writing, by Owner. ENGINEER communication shall be directly with Owner's representative (Construction foremen or superintendent or other member identified as Project Manager), and to City Engineer or his designee.

ARTICLE 7 ASSIGNMENT

- A. ENGINEER may neither assign nor transfer any rights or obligations under this Contract without prior written authorization from the CITY's Authorized Agent. The written authority will in no way relieve ENGINEER from the primary responsibility for performance of the services and deliverables specified in this Contract.

ARTICLE 8 SUBCONTRACTS

- A. ENGINEER must require all sub consultant contracts to contain all appropriate terms and conditions of this Contract. The use of sub consultants does not relieve the ENGINEER from performing and delivering the work stated in this Contract.
- B. A copy of any and all sub consultant contracts must be sent to the CITY's Authorized Agent after execution of the sub consultant contract and prior to work starting under the sub consultant contract.

ARTICLE 9 AMENDMENTS, CHANGE ORDERS, MERGER, COUNTERPARTS, AND WAIVER

- A. Amendments to this Contract will be considered only for unforeseen work or services that were excluded in the Scope of Work, entitled "Detailed Scope of Work," and that are considered essential to the work. Any written claim made by ENGINEER for extra work or costs under this Contract that has been approved by the CITY's Authorized Agent must be evidenced by an amendment to this Contract. Amendments must be in writing and executed and approved by the same parties and officials who executed and approved the original Contract, or their successors in office. ENGINEER must notify CITY's Project Manager in writing if ENGINEER will be delayed in any way from completing the project under this Contract.
- B. The work to be done in connection with this Contract may be changed at the request of CITY, with the mutual concurrence of ENGINEER. Any change will be clearly and fully defined in writing, and approved by both parties. Change orders must be consistent with the basic purpose of this Contract and within the general Scope of Services identified in the Special Conditions.
- C. This Contract constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this Contract shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Contract. ENGINEER, by the signature below of its authorized representative, hereby acknowledges that the ENGINEER has read this Contract, understands it and agrees to be bound by its terms and conditions.
- D. This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Contract.

ARTICLE 10 COMPLIANCE WITH LICENSES, PERMITS, AND OTHER REGULATIONS

- A. ENGINEER shall procure all licenses, certifications, education, permits, or other rights necessary to fulfill its obligations under this Contract in compliance with all applicable federal and state laws.

ARTICLE 11 DATA PRACTICES AND INTELLECTUAL PROPERTY

- A. The Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, applies to all data created, gathered, generated, or acquired in accordance with this Contract.
- B. Any reports, studies, photographs, negatives, or other documents created and paid for by ENGINEER in the performance of its obligations under this Contract are instruments of service in respect to ENGINEER's services and are the exclusive property of CITY. ENGINEER must remit all such materials to CITY upon completion or cancellation of this Contract. The CITY will indemnify ENGINEER for claims resulting from any reuse of such materials beyond the scope of this Contract. The City shall grant the ENGINEER a non-exclusive license, to the extent of the CITY's rights in such data, to use the ENGINEER Data for other purposes. ENGINEER waives all claims against the CITY resulting in any way from any reuse of the ENGINEER.
- C. Unless otherwise directed by CITY, the originals of reports, tests, drawings and plans; and legibly reproducible copies of work sheets, field notes, computations, photos, test results, and other project data must be relinquished to CITY:
1. Upon written notice of completion or cancellation of this Contract.
 2. Upon written notification by CITY.
 3. Prior to final payment by CITY to ENGINEER for this Contract.
- D. Notwithstanding the above paragraphs, work papers, proprietary information, processes, methodologies, know-how and software ("ENGINEER Data") previously belonging or licensed to ENGINEER and used to perform ENGINEER's services shall remain the property of ENGINEER. ENGINEER shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the ENGINEER), whether or not the Project is completed. To the extent the services performed by ENGINEER contain ENGINEER Data, ENGINEER hereby grants to CITY a non-exclusive, non-assignable, royalty-free, irrevocable license to use such ENGINEER Data for the purposes set forth herein, subject to the following limitations: such ENGINEER Data are not intended or represented to be suitable for use or reuse by CITY on extension of the Project or on any other project without written verification or adaptation by ENGINEER and any such reuse or modification of the ENGINEER Data without the written verification or adaptation by ENGINEER shall be done at CITY's sole risk and without liability to ENGINEER.

ARTICLE 12 LIABILITY

- A. General - Having considered the potential liabilities that may exist during the performance of the Services, the benefits of the project, and the ENGINEER's fee for the Services, and in consideration of the promises contained in this Contract, CITY and ENGINEER agree to allocate and limit such liabilities in accordance with this Article.
- B. Indemnification - ENGINEER and CITY (the "Indemnifying Party") shall be liable for its own negligent acts, errors and omissions to the extent provided by law and subject to the CITY's cap on municipal tort liability under Minnesota Statutes Section 466.04, and hereby agrees to defend, indemnify, and hold harmless the other ("the Indemnified Party"), from any liability, damages, and costs arising from the negligent acts of ENGINEER and CITY and anyone for whose negligent acts they may be liable for in the performance of professional services required under this Contract which the Indemnified Party, its officers and employees may hereafter sustain, incur or be required to pay to the full effect provided by Minnesota Statutes Chapter 337, to the extent the ENGINEER and CITY are responsible for such liability, costs, damages, including reasonable attorneys' fees. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of ENGINEER and CITY, they shall be borne by each party in proportion to its own negligence.
- C. Survival - Upon completion of all services, obligations, and duties provided for in this Contract, or if this Contract is terminated for any reason, the terms and conditions of this Article shall survive.

ARTICLE 13 WORKERS' COMPENSATION

- A. Any and all employees of ENGINEER, including its sub consultants, or other persons while engaged in the performance of any work or services required by ENGINEER under this Contract, will not be considered employees of CITY. Any and all claims that may arise under the Workers' Compensation Act of Minnesota on behalf of said employees, or other persons while so engaged, and any and all claims made by any third party as a consequence of any act or omission on the part of ENGINEER's employees, or other person while so engaged on any of the work or services to be rendered, will in no way be the obligation or responsibility of CITY. Pursuant to Minnesota Statutes 176.182, acceptable evidence of compliance with Workers' Compensation insurance coverage requirements must be presented to CITY before CITY may enter into a contract with ENGINEER.

ARTICLE 14 BONDS

This Article is hereby deleted.

ARTICLE 15 INSURANCE

- A. A certificate of insurance for each type of insurance required under this Contract must be filed with the CITY's Authorized Agent prior to execution of the Contract by City. Each policy must contain a requirement that the insurer provide the CITY a 30-day notice of cancellation.
- B. ENGINEER must maintain and furnish satisfactory evidence of the following insurance policies:
1. ENGINEER shall procure and maintain for the term of the Contract, insurance coverage as is reasonable and necessary for performed services by ENGINEER and its employees.
 2. The ENGINEER shall be responsible for obtaining separate certificates and endorsements for each sub consultant. ENGINEER shall determine the appropriate level of insurance coverage and limits from its sub consultants.
 3. **Workers' Compensation Insurance:** ENGINEER will provide Workers' Compensation insurance for all ENGINEER employees and, in case any work is subcontracted, ENGINEER will require the sub consultant to provide Workers' Compensation insurance in accordance with the statutory requirements of CITY of Minnesota, and including Coverage B, Employer's Liability, at limits not less than \$100,000.00 bodily injury by disease per employee; \$500,000.00 bodily injury by disease aggregate; and \$100,000.00 bodily injury by accident. Evidence of sub consultant's insurance shall be filed with the ENGINEER.
 4. **Commercial General Liability:** ENGINEER will maintain insurance protecting ENGINEER from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage including loss of use which may arise from operations under this Contract whether such operations be by ENGINEER or by a sub consultant or by anyone directly or indirectly employed under this Contract. ENGINEER's liability insurance shall be primary to any liability insurance maintained by the City. Unless otherwise specified within this Contract, ENGINEER's insurance minimum amounts will be as follows:
 - a. \$1,000,000.00 - per occurrence
 - b. \$1,000,000.00 - annual aggregate

In addition, the following coverages should be included:

- a. Bodily Injury and Property Damage
 - b. Products and Completed Operations Liability
 - c. Blanket Contractual Liability
 - d. Name CITY as an Additional Insured
5. **Commercial Automobile Liability:** ENGINEER will maintain insurance protecting ENGINEER from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services, as well as from claims for

property damage including loss of use which may arise from operations under this Contract whether such operations were by ENGINEER or by sub consultant or by anyone directly or indirectly employed under this Contract. Unless otherwise specified within this Contract, the ENGINEER insurance minimum amounts will be as follows:

\$1,000,000.00 - per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included:

Owned, Hired, and Non-owned
Name CITY as an Additional Insured

6. Professional Liability Insurance:

Unless otherwise specified within this Contract, ENGINEER insurance minimum amounts will be as follows:

\$1,000,000.00 - per claim

\$1,000,000.00 - annual aggregate

This policy will provide coverage for all claims ENGINEER will become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to ENGINEER's professional services required under this Contract.

C. ENGINEER must:

1. Include legal defense fees in addition to its liability policy limits, with the exception of Professional Liability Insurance above; and
2. Obtain insurance policies from an insurance company having an "AM BEST" rating of A-VIII or better.

D. CITY reserves the right to immediately rescind this Contract if ENGINEER is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against ENGINEER. Upon written request by the CITY's Authorized Agent, all insurance policies shall be open to inspection, and copies of policies may be requested.

ARTICLE 16 DELIVERABLE STANDARDS

- A. CITY will have the authority to disapprove or reject services or deliverables that are defective. ENGINEER will be responsible for the accuracy of its work under this Contract and must make timely revisions or corrections without compensation resulting from errors and omissions on the part of ENGINEER. The services or deliverables provided to CITY by ENGINEER must be of such quality that they are suitable for their intended purpose.
- B. ENGINEER's services and compensation under this Contract have been agreed to in anticipation of the orderly and continuous progress of the Project through completion. Unless specific periods of time or specific dates for providing services are specified in this Contract, ENGINEER's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.
- C. If in this Contract specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such periods of time or dates are changed through no fault of ENGINEER, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If CITY has requested changes in the scope, extent, or character of the Project; the time of performance of ENGINEER's services shall be adjusted equitably.
- D. Neither party will be held responsible for delay or failure to perform when such delay or failure is due to any of the following, unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure: fire, flood, epidemic, strikes, wars, acts of God, unusually severe weather, or delays or defaults caused by public carriers, provided the defaulting party gives written notice as soon as possible to the other party of its inability to perform.
- E. For purposes of this Contract the term "day" means a calendar day of 24 hours.

ARTICLE 17 ANTITRUST

- A. ENGINEER assigns to CITY any and all claims for overcharges as to services and deliverables provided in connection with this Contract resulting from alleged antitrust violations, which arise under the antitrust laws of the United States and state of Minnesota.

ARTICLE 18 OFFICIALS NOT TO BENEFIT

- A. Without prior written consent of CITY, ENGINEER must not employ any professional or technical personnel who are or have been at any time during the time period of this Contract in the employ of CITY, except retired CITY employees, without written consent from CITY.
- B. ENGINEER warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for ENGINEER, to solicit or secure this Contract, and that ENGINEER has not paid or agreed to pay any company or person, other than a bona fide employee working for ENGINEER, any fee, commissions, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award of making of this Contract.

ARTICLE 19 CANCELLATION

- A. This Contract may be canceled by CITY at any time, with or without cause, upon written notice to the ENGINEER. In the event of such cancellation ENGINEER will be entitled to payment, determined on pro rata basis, for services and deliverables performed or delivered.

If City fails to make any payment due to ENGINEER for services satisfactorily performed and expenses within thirty days after the date of ENGINEER's invoice, ENGINEER may, after giving seven days written notice to CITY, and without waiving any claim or right against CITY and without incurring liability whatsoever to CITY, suspend services and withhold project deliverables due under this Contract until ENGINEER has been paid in full all amounts due for services, expenses and charges.

ARTICLE 20 ERRORS OR OMISSIONS

- A. ENGINEER will be responsible for the accuracy of its work and must promptly make necessary revisions or corrections resulting from ENGINEER's negligent acts, errors, or omissions without additional compensation. Acceptance of the work by CITY will not relieve ENGINEER of the responsibility for subsequent correction of any errors or omissions or for clarification of any ambiguities.
- B. If negligent acts, errors, or omissions are made by ENGINEER in any phase of the work, the correction of which may require additional field or office work, ENGINEER will be promptly notified by CITY and will be required to perform such additional work as may be necessary to correct these negligent acts, errors, or omissions without undue delay and without additional cost to CITY. If the ENGINEER is aware of any negligent acts, errors, or omissions made in any phase of its work, the corrections of which may require any additional field or office work, ENGINEER must promptly perform such additional work as may be necessary to correct these negligent acts, errors, or omissions without undue delay and without additional cost to CITY.
- C. ENGINEER will be responsible for any damages incurred as a result of its negligent acts, errors, or omissions and for any loss or cost to repair or remedy ENGINEER's errors, omissions or negligent acts. Acceptance of the work by CITY will not relieve ENGINEER of the responsibility for subsequent correction of any such negligent acts, errors, or omissions, or of liability for loss or damage resulting therefrom.
- D. ENGINEER must respond to CITY's notice of any errors and/or omissions within reasonable time and give immediate attention to these corrections to minimize any delays to the ENGINEER.

ARTICLE 21 DISPUTE RESOLUTION

- A. Mediation. Any claim, controversy or dispute arising out of this Agreement shall be subject to non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either party. The mediation shall be

conducted in Olmsted County, Minnesota, and in accordance with the Minnesota Civil Mediation Act, Minn. Stat. 572.31, et., seq. Any claim, controversy or dispute not resolved by mediation may be the subject of legal or equitable proceedings filed by either party. The legal or equitable proceedings must be venued in Olmsted County, Minnesota. The parties waive all rights to and claims for monetary awards other than compensatory damages.