

**CITY
OF
BLOOMINGTON
MINNESOTA**

**GENERAL
SPECIFICATIONS**

Revised March 5, 2010

i.	DATE OF RECEIVING BIDS	1
ii.	EXAMINATION OF PLANS, SPECIFICATIONS AND SITE	1
iii.	DELIVERY OF BID	1
iv.	ADDENDA	2
v.	CAPITAL AND EQUIPMENT	2
vi.	BID GUARANTEE (BID BOND)	2
vii.	NONCOLLUSION STATEMENT	3
viii.	INDEMNIFICATION	3
ix.	CONSIDERATION OF BIDS	3
x.	CONTRACT TERM	4
1.	DEFINITIONS	5
2.	BID PROPOSAL FORM	6
3.	PLANS AND SPECIFICATIONS	7
4.	EXAMINATION OF PLANS AND SPECIFICATIONS	8
5.	INTERPRETATIONS AND CHANGE ORDERS	8
6.	MATERIALS	8
7.	FORCE ACCOUNT WORK	10
8.	ESTIMATE OF QUANTITIES	10
9.	OTHER CONTRACTS	11
10.	SCHEDULING AND CONSTRUCTION PROGRESS	11
11.	DELAYS AND EXTENSION OF TIME	13
12.	FAILURE TO COMPLETE WORK ON TIME	15
13.	ABANDONMENT OF THE WORK	16
14.	MONTHLY ESTIMATES	16
15.	CONTRACTOR, ENGINEER, INSPECTOR RELATIONSHIPS	17
16.	CONTRACTOR'S RESPONSIBILITIES	17
17.	DAMAGE TO EXISTING IMPROVEMENTS	18
18.	RESPONSIBILITY FOR DAMAGE CLAIMS	18
19.	PROTECTION AND RESTORATION OF PROPERTY	19
20.	CONTRACTOR'S PRIVILEGES IN STREETS, ALLEYS, AND RIGHTS-OF-WAYS	21
21.	WORK IN STORMS	22
22.	USE OF EXPLOSIVES	22
23.	NOISE ELIMINATION	22
24.	SANITARY PROVISIONS	23
25.	FOSSILS	23

TABLE OF CONTENTS

26.	RIGHT TO USE IMPROVEMENT	23
27.	MONUMENTS	23
28.	CONSTRUCTION STAKES, LINES AND GRADES	23
29.	INSPECTION	24
30.	ROYALTIES AND PATENTS	25
31.	ASSIGNMENT OF CONTRACT	25
32.	FORFEITURE OF CONTRACT	25
33.	INJUNCTIONS	26
34.	DISPUTES AND LITIGATION	26
35.	PERFORMANCE AND GUARANTEE BOND	27
36.	CONTRACTOR'S INSURANCE	27
37.	LABOR	28
38.	INDEPENDENT CONTRACTOR	29
39.	NONDISCRIMINATION CLAUSE	29
40.	AIR, LAND AND WATER POLLUTION	30
41.	41. GUARANTEE	30
42.	DRILLING OF TEST HOLES	30

ATTACHMENTS

- **IC-134 WITHHOLDING AFFIDAVIT FOR CONTRACTORS**
- **CONTRACTOR'S CERTIFICATION**
- **THREE WEEK LOOK AHEAD SCHEDULE**

INSTRUCTIONS TO BIDDERS

CITY OF BLOOMINGTON, MINNESOTA

i. DATE OF RECEIVING BIDS

Sealed bids will be received by the City of Bloomington, Minnesota, up to the date and hour, and at the location as specified in the "Invitation for Bids." Bids received after the time specified shall be returned unopened.

ii. EXAMINATION OF PLANS, SPECIFICATIONS AND SITE

Plans and Specifications are on file in the office of the City Engineer. Additional information may be obtained from that office. Bidders shall use complete sets of Plans, Specifications, Special Provisions and Contract Documents in preparing their bids. The City of Bloomington assumes no responsibility for errors or misinterpretations resulting from the use of incomplete sets of these documents. In making copies of these documents available, the City of Bloomington does not confer a license or grant permission for any other use of the documents other than for the purpose of obtaining bids on the work.

Bidders must familiarize themselves with all ordinances and statutes pertaining to public improvements, and examine and determine for themselves the location and nature of the proposed work, and the amount and character of the labor and materials required therefore, and the difficulties which may be encountered.

iii. DELIVERY OF BID

Bids shall be submitted on the Bid Proposal Form furnished by the City of Bloomington. The Contractor shall also submit a completed copy of the *City of Bloomington Contractor Information Sheet*. Insufficient, inaccurate, or lack of pertinent information on this sheet may be deemed sufficient cause for disqualification. The bid shall be submitted in a sealed envelope plainly marked as to the Title of Project and date of bid opening.

Each bid must contain the full name or names and post office address of the bidder or bidders, and any person signing any bid as agent of another, or of a firm, must furnish legal evidence of authority to do so.

More than one bid from an individual, firm, partnership or corporation under the same or different names will not be considered. Evidence that any bidder has submitted more than one bid as the prime contractor for the same work will cause rejection of all such bids. Collusion between the bidders will be considered sufficient cause for the rejection of all bids so affected. A party who has quoted prices to a bidder is not thereby disqualified from quoting prices to other bidders, or submitting a direct bid.

Failure on the part of any bidder to carry out previous contracts satisfactorily or bidder's lack of experience or equipment necessary for the satisfactory completion of the project may be deemed sufficient cause for disqualification.

Unless otherwise specifically provided in the specifications for the improvement, bids must be made upon each and every item on the blank Bid Proposal Form.

Telegraphic or e-mailed bids will not be considered. Modifications to bids already submitted will be allowed if received prior to the time specified in the "Invitation for Bids." Modifications shall be submitted as such, and shall not reveal the total amount of either the original or revised bids.

Whenever alternate bids are called for, specifying the use of several different classes of material or types of improvement for the same work, all bidders are requested to submit prices for use of each of the several classes of material or types of improvement as specified. The material to be used or the type of improvement to be adopted will be selected by the City after the bids have been opened and read.

iv. ADDENDA

Any explanation regarding the meaning or interpretation of contract drawings, specifications, special provisions, or other contract documents must be requested in writing by the bidder and received at least seven (7) days prior to the date for receipt of bids as indicated in the Invitation to Bid. Any explanations or interpretations made by the City shall be made in the form of addenda to the documents and shall be furnished to all bidders, who shall submit all addenda with their bids. Oral explanations and interpretations made prior to the bid opening shall not be binding.

No substitutions will be considered prior to receipt of the bids unless written request for approval has been received by the City Engineer at least seven (7) days prior to the time of receipt of the bids. Such requests shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitution including drawings, performance and test data, and other information necessary for an evaluation. The City's decision of approval or disapproval of a proposed substitution shall be final. If approval of a substitution is made prior to receipt of bids, such approval will be set forth in an addendum.

Addenda will be mailed, either electronically or conventionally, to all who are known by the City of Bloomington to have received a complete set of the bidding documents, but no addenda will be issued by the City of Bloomington, either via electronic or conventional mail later than four (4) days prior to the date for receipt of bids except an addendum withdrawing the request for bids or one which includes a postponement of the date for receipt of bids.

v. CAPITAL AND EQUIPMENT

Bidders must present satisfactory evidence that they are familiar with the class of work specified, and that they have the necessary capital, tools, machinery and other equipment necessary to conduct the work and complete the improvement within the time specified in the Special Provisions in a good and workmanlike manner and to the satisfaction of the City Engineer and the City Council of the City of Bloomington, Minnesota.

vi. BID GUARANTEE (BID BOND)

Each bid shall be accompanied by a money order, certified check or bid bond payable to the order of the City of Bloomington in an amount not less than five percent (5%) of the total amount of the bid. No bid will be considered unless accompanied by such deposit.

In case alternate bids are called for, providing for the use of several different classes of materials or types of improvement for the same work, one deposit in the amount of five percent (5%) of the total amount of the highest bid will be sufficient for all bids.

As soon as a contract is awarded, all deposits shall be returned to the bidders, except that of the three lowest bidders, which shall be retained until the contract has been signed and the bonds of the Contractor have been filed, approved, and accepted which shall be within ten (10) days of notice of award of the contract.

If the successful bidder shall fail to enter into such contract in accordance with the accepted bid or shall fail to furnish the required bond within ten (10) days from notice of award, the bidder's deposit shall be forfeited to the City of Bloomington as liquidated damages.

The next best bid shall be then considered the successful bid, and, at the discretion of the City Council, the contract may be awarded to the bidder submitting that bid.

vii. NONCOLLUSION STATEMENT

The bidder hereby affirms that he or she is the bidder, a partner of the bidder, or an officer or employee of the bidding corporation with authority to sign on its behalf. The bidder also affirms that the attached bid has been compiled independently and without collusion or agreement or understanding with any other vendor. The bidder also affirms that the content of this bid has not been communicated by the bidder or its agents to any person not an employee or agent of the bidder.

viii. INDEMNIFICATION

The bidder agrees that if the contract is awarded to the bidder, the bidder shall defend, indemnify, and hold harmless the City and its officials, agents, and employees against any and all claims, liabilities, damages, losses, expenses, or judgments asserted against, imposed upon, or incurred by the City and its officials, agents and employees that, either directly or indirectly, arise out of or result from the performance of services under the contract, except those claims, liabilities, damages, losses, expenses, or judgments that the bidder can establish arose directly from the negligence or misconduct of the City.

The bidder also agrees that if the contract is awarded to the bidder, the bidder shall take all reasonable precautions for the safety of all employees on the site and shall provide reasonable protection to prevent damage or loss to the property on the site or properties adjacent thereto and to work, materials, and equipment under the bidder's control.

If the contract is awarded to the bidder, the bidder shall submit a certificate to the City warranting that the bidder is in full compliance with Minnesota Statutes, Section 176.181 Subd. 2 (Workers' Compensation) and shall submit such insurance, if requested, in the specifications. Certificates of insurance as detailed in the specifications must be submitted to the City before any work may begin under the contract. All such certificates shall state that the insurance company shall give the City thirty (30) days' written notice of cancellation, non-renewal, or any material change in the policy.

ix. CONSIDERATION OF BIDS

All properly identified bids received on time will be opened publicly and will be read aloud. All bid totals submitted shall be made available to interested parties, immediately following the bid opening.

All bids will be placed in the custody of the City Engineer until the Contract for the Project has been awarded by the City Council. The City Engineer will check all bids submitted to verify the total bid on each bid proposal and will certify that all bids have been checked and corrected (where errors in extension have been made). The certification will be presented to the City Council when award of Contract is considered.

After the City Council approves the ranking by awarding a contract to the lowest responsible bidder, the information in the bids is considered public, with the exception of any trade secret information. If the City Council rejects all bids, all data other than the public data remains non-public until a rebidding that results in a contract award or a determination by the City Council to terminate the selection process. An abstract of the bids will be made available to all bidders after the Project is awarded by the Bloomington City Council.

Once the bids become public information, they will be made available for examination by interested parties. Each interested party is requested to initial each page reviewed, indicating that the bid was examined.

The City shall have the right to reject any and all bids, reject a bid not accompanied by the required check or security, reject a bid which is in any way incomplete or irregular, and to waive informalities.

Pursuant to the Bloomington City Charter, the City will award the contract to the lowest responsible bidder, which will be based on factors pertinent to the matter which may include the following:

1. The bidder's adherence to all conditions and requirements of the bid specifications.
2. The total bid price.
3. The bidder's general reputation and experience.
4. Evaluation of the bidder's ability to service the City.
5. Prior knowledge of and experience with the bidder.
6. The needs and requirements of the City.
7. The bidder's ability to meet delivery requirements.
8. All maintenance costs and warranty provisions.

Unless otherwise stated in the specifications, the City reserves the right to award the contract in whole or in part, whichever is in the best interests of the City. All tied bids shall be resolved in a manner which is in the best interests of the City. The City reserves the right to waive informalities in the bid and to award to the bidder the City determines is in the City's best interest.

x. CONTRACT TERM

The term of the contract shall commence on the date the contract is signed by the City. The contract expiration date shall be the date stated in the contract or upon completion of all of the terms stated in the contract.

GENERAL SPECIFICATIONS

1. DEFINITIONS

When used in these Specifications and Contract, the following terms (or if pronouns in place of them are used) shall be interpreted as to intent and meaning as follows:

- a) **BIDDER:** Any individual, firm, or corporation submitting a bid proposal for the work.
- b) **CONTRACT:** The agreement covering the performance of the work, and the furnishing of materials for the construction of the Project. The contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The contract documents shall include the Agreement between the City of Bloomington and the Contractor (hereinafter referred to as the Agreement), the General and Supplemental Specifications and Special Provisions (hereinafter referred to as "Specifications"); the City of Bloomington Instructions to Bidders; addenda to bidding requirements, if any; Contractor's Bid, Bid Proposal Forms; drawings; plans, addenda issued prior to execution of the Contract; other documents listed in the Agreement and Modifications issued after execution of the Contract; and any other documents listed in the Contract Documents enumerated above. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order or Supplemental Agreement, or (3) a written order for a minor change in the work issued by the Engineer. The contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Engineer and the Contractor, (2) the City and a Subcontractor or a Sub-subcontractor, or (3) between any persons or entities other than the City and Contractor. The Engineer shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Engineer's duties.
- c) **CONTRACT BOND:** The approved form furnished by the Contractor and their Surety or Sureties as a guarantee on the part of the Contractor to execute the work in accordance with the terms of the Contract.
- d) **CONTRACTOR:** The individual, firm or corporation with whom the City contracts.
- e) **ENGINEER:** The duly authorized engineering representative of the City Engineer, who has been delegated responsibility for engineering supervision of the construction.
- f) **FINAL COMPLETION:** When all of the Work has been performed to the requirements of the Contract, except for those items arising from the provisions of warranty, and is so certified.
- g) **FINAL COMPLETION DATE:** The date as specified in the Special Provisions in a completion date contract.
- h) **INSPECTOR:** An authorized representative of the City Engineer, assigned to make any or all necessary inspections of the work performed and the materials furnished by the Contractor.
- i) **INTERIM MILESTONE:** A point in time, or duration, representing the completion of key or important intermediate event(s) in the life of the Project.

- j) LABORATORY: The testing laboratory which must be approved by the Engineer to inspect and determine the suitability of materials.
- k) PLANS: All approved drawings or reproductions of drawings pertaining to the construction of the work and appurtenances.
- l) BID: The written proposal of the Bidder on the form furnished for the work contemplated.
- m) BID PROPOSAL FORM: The approved prepared form on which the Bidder submits the bid for the work contemplated.
- n) BID GUARANTEE: The security furnished by the Bidder as a guarantee of good faith to enter into a contract with the City of Bloomington if the work is awarded to that bidder.
- o) PROJECT: The specific section of the road, surface water, site or the type of work together with all appurtenances and construction to be performed under the Contract.
- p) SPECIFICATIONS: The directions, provisions and requirements contained herein, together with all written agreements made or to be made, pertaining to the method and manner of performing the work, or to the quantities and qualities of materials to be furnished under the contract.
- q) SUBCONTRACTOR: The individual, firm or corporation undertaking the execution of a part of the work under the terms of the contract by virtue of an agreement between an individual firm or corporation and the Contractor subject to the approval of the City. It does not include one who furnishes material only.
- r) SUBSTANTIAL COMPLETION: When specific aspects of the Work have been completed as defined in the Special Provisions.
- s) SUBSTANTIAL COMPLETION DATE: The date as specified in the Special Provisions in a completion date contract.
- t) SURETY: The individual or corporate body which is bound with and for the Contractor for the acceptable performance of the Contract and for the Contractor's payment of all obligations pertaining to the work.
- u) WORK: The term "Work" means the services or duties required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided by the Contractor to fulfill the Contractor's obligations.
- v) WRITTEN NOTICE: Written Notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered mail to the last known business address.

2. BID PROPOSAL FORM

All bids must be made in ink upon the blank bid proposal form included in the Specifications and should give a unit price for each item, extended totals for the items, and totals as indicated for the work, and must be signed and acknowledged by the bidder, in accordance with the directions in the

bid proposal form. In order to insure consideration, the bid proposal form shall be enclosed in a sealed envelope addressed to the City Clerk and clearly marked as to the time and date of the bid opening and the nature of the Project. The bid shall be delivered to the address contained in the invitation for bids. The legal status of the bidder must be stated in the bid. A corporation bidder must name the state in which its articles of incorporation are held. A partnership must give the full names and addresses of all partners

When a firm submits a bid, the individual names of all its members shall be written out and shall be signed in full; but the signers may, if they choose describe themselves in addition, as doing business under a firm name and style.

In case a corporation submits a bid, the bid must be signed in the name of, and under the seal of, the corporation by a duly authorized officer or agent of the corporation. The corporate address must also be included. Such officer or agent must present legal evidence stating their lawful authority to sign said bid. In the event that any corporation organized and doing business under the laws of a state other than Minnesota is the successful bidder, such corporation shall present evidence that it is authorized to do business in the State of Minnesota before the contract is executed. After bidders have submitted bids, they shall not withdraw or cancel such bid and all sums deposited with such bid may be held by the City until all bids submitted have been canvassed, a contract awarded and executed, and the required bonds and insurance furnished and approved.

The acceptance of the bid will be a notice in writing signed by a duly authorized representative of the City of Bloomington. The acceptance of the bid shall bind the successful bidder to execute the Contract within ten (10) days after the award and to be responsible for liquidated damages as provided for execution of Contract and damages for failure to execute. The rights and obligations provided for in the Contract shall become effective upon the parties only with its formal execution by the City of Bloomington.

The City reserves the right to reject any or all bids or to accept the bid deemed in the best interest of the City. Without limiting the generality of the foregoing, any bid which is incomplete, obscure, or irregular may be rejected; any bid having erasures or corrections in the price sheets, which have not been initialed by the contracting officer executing the bid, may be rejected; any bid which omits a bid on any one or more items in the price sheet may be rejected; any bid in which unit prices are obviously unbalanced may be rejected; any bid accompanied by an insufficient or irregular bid bond may be rejected.

3. PLANS AND SPECIFICATIONS

The Plans for this improvement and the Specifications accompanying them shall be considered as a whole, and anything shown or called for in one and omitted in the other is as binding as if called for or shown by both. Figure dimensions shall in all cases be used in preference to scale dimensions. Any work not herein specified which may be fairly implied as included in this improvement shall be done by the Contractor without extra pay. Special provisions and detail plans are intended to modify and shall take precedence over the standard plans, a standard specifications and these general specifications. In case of conflict between plans and specifications, the specifications shall govern.

All work shall be completed in accordance with the Specifications and Plans, and in compliance with the laws of the State of Minnesota and the ordinances of the City of Bloomington so far as applicable.

4. EXAMINATION OF PLANS AND SPECIFICATIONS

Before submitting a bid, all Contractors must carefully examine the plans and specifications and judge for themselves the difficulties which may arise on the site of the work.

After the time set for opening the bids, no bidder may, without the consent of the City, withdraw their bid or claim extra compensation or damages for any error or omission made by said bidder in preparing the bid.

In the event of discrepancies between the prices quoted in the bid, in unit prices and the extensions thereof, the unit prices shall control. The prices are to include the furnishing of all materials, plants, equipment, tools, and all other facilities and the performing of all labor and services necessary or proper for the completion of the work, except such as may be otherwise expressly provided in the Contract documents.

5. INTERPRETATIONS AND CHANGE ORDERS

No oral interpretation shall be made to any bidder as to the meaning of any of the Contract documents, or to modify any of the provisions of the Contract documents. Every request for an interpretation shall be made in writing and addressed and forwarded to the Engineer. The City will not be responsible for any other explanation or interpretation of the Plans and Specifications.

If unforeseen conditions require a change in the dimensions of a structure, location of underground pipes, or major variations of a similar nature from the original plans, necessitating exceeding the reasonable limits, as defined in Article 8 of these Specifications, or being of the nature of a substantial departure from the original Plans, such work shall be covered by a change order. The change order is to set forth in complete detail the nature of the change and reasons therefore. The compensation to be paid the Contractor and whether it is an addition or a reduction with respect to the original contract costs is to be covered in detail. Should additional or supplemental drawings be required, they will be furnished by the Engineer.

6. MATERIALS

All materials shall be new unless recyclable materials are practicable and appropriate. Both the workmanship and material shall be of good quality. The City of Bloomington requires that any contractor or subcontractor that bids any materials for any part or parts of the Project, MUST include in the bid, products or construction items made with recycled materials, whenever and wherever possible, practical and appropriate, so long as those materials meet all performance requirements; state and local codes; will not compromise the quality, health and safety, or the operation and integrity of the Project.

If both recycled and non-recycled product is bid, the City may, after comparing quality, performance and cost, give preferential consideration to materials with recycled content or non-recycled content. If recycled produce is to be bid, it shall be brought to the Engineer prior to the bidding for approval.

The source of supply of materials to be used shall be approved by the Engineer before delivery is started. The approval of the source of any material will stand only as long as the material itself conforms to the specifications.

Only materials conforming to the requirements of these specifications shall be used in the work. The source of the material shall not be changed at any time without written approval of the Engineer. The Contractor may be required at any time to furnish a complete statement of the origin, composition and manufacturer of any or all material required in the work, or to submit samples of the same.

Materials shall be stored so as to insure the preservation of their quality and fitness for the work and such materials, even though approved before storage, shall be subject to test and must meet requirements of these Specifications at the time it is proposed to use them in the work. Materials shall be stored in a manner that will facilitate inspection.

All materials, supplies, and articles furnished shall, whenever so specified and otherwise wherever practicable, be the stock products of recognized reputable manufacturers.

From the commencement of the work until the completion of the same, the Contractor shall be solely responsible for the care of the work covered by this Contract and for the materials delivered at the site intended to be used in the work and all injury or damage to the same from whatever the cause, shall be made good at the Contractor's expense before the final estimate is made. The Contractor shall provide suitable means of protection for and shall protect all materials intended to be used in the work. The Contractor shall take all necessary precautions to prevent injury or damage to the work in progress of construction by flood, freezing or from inclemencies of the weather at any and all times and only approved methods shall be used for this purpose.

All materials not conforming to the requirements of these specifications shall be considered as defective and all such materials, whether in place or not, will be rejected and shall be removed immediately within two working days from the Project site, unless otherwise permitted. No material which has been rejected - the defects on which have been corrected or removed - shall be used until approval has been given.

The Contractor shall replace and re-execute their own work in accordance with the Contract Documents without expense to the City and shall bear the expense of making good all work of other Contractors destroyed or damaged by such removal or replacement.

If the Contractor does not remove such condemned work and material within a reasonable time fixed by written notice, the City may remove them and may store the materials at the expense of the Contractor. If the Contractor does not pay the expense of such removal within ten days thereafter, the City may, upon ten days written notice, sell such material 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.

When tests of materials are necessary, such tests shall be made at the expense of the City unless otherwise provided. The Contractor shall afford such facilities as the Engineer may require for collecting and forwarding samples, and shall not use the materials represented by the samples until tests have been made and the materials have been found to satisfy the requirements of these specifications. The Contractor in all cases shall furnish the required samples without charge. Retesting of materials that fail the first test shall be at the Contractor's expense.

If the contractor does not deliver materials or timelines do not allow advanced testing, so that the testing can occur prior to the installation, the Contractor shall be responsible to replace any defective material at their own expense that was incorporated into the work.

7. FORCE ACCOUNT WORK

If the Engineer orders, in writing, the performance of any work not covered by the Plans or included in the Specifications, and for which no item in the Contract is provided, and for which no unit price or lump sum basis can be agreed upon, then such extra work shall be done as stipulated under section 1904 of Mn/DOT's Standard Specifications for Construction.

The Contractor is required to submit force account work itemized statements of costs above in accordance with Mn/DOT 1904 to the Engineer on Mn/DOT form TP-21659 (Summary of Daily Force Account). Copies of this form can be obtained from the Engineer.

The following sentence shall be added to the second paragraph of Mn/DOT 1904:
"Under no circumstance will the negotiated unit price for Extra Work which is performed by a subcontractor include a Prime Contractor allowance which exceeds that provided for in 1904(4), Paragraph 3."

The monthly pay estimates shall include all agreed upon charges for Force Account Work done the previous month.

Claims for work not ordered in writing by the Engineer will not be allowed.

8. ESTIMATE OF QUANTITIES

The schedule of quantities, although stated with as much accuracy as is possible in advance, is approximate only and is assumed solely for the purpose of comparing bids. The quantities on which payments will be made to the Contractor are to be determined by measurements of the work actually performed by the Contractor as specified in said contract.

The City reserves the right to increase or decrease, within reasonable limits, any of the quantities shown. The term "reasonable limits" shall mean a twenty-five (25) percent increase or decrease in the quantities on any one contract item. In the event the actual quantities differ more than the reasonable limits an equitable revision of the unit price shall be made when requested by either the City or the Contractor. This twenty-five (25) percent limit does not apply to items specifically excluded or listed as optional by the City, nor to minor contract items. The request shall be made in writing and shall be accompanied by evidence supporting the claim.

A. Under-run Quantity

If the final quantity of any Contract item is less than 75 percent of the quantity in the bid schedule, the basis of payment for that Item may be revised to the extent that the evidence justifies an increase in the fixed expenses chargeable to that Item. In no case will costs incurred prior to the award of the Contract, nor loss of profits be considered as part of these fixed costs. The total payment for the decreased quantity will not exceed that which would be made for 75 percent of the quantity in the bid schedule at the Contract price.

B. Over-run Quantity

If it is found that the final quantity of any Contract item will be more than 125 percent of the quantity in the bid schedule, a revised basis of payment may be agreed upon for the quantity in excess of the 125 percent that is performed. If a revised unit price or lump sum adjustment cannot be agreed upon, the Contractor shall enter into an agreement with the City to perform the remaining work on a Force Account basis as provided in Article 7.

9. OTHER CONTRACTS

The City may award other Contracts for additional work and the Contractor shall cooperate fully with such other Contractors and adjust his/her work to that provided under other contracts as may be directed by the Engineer or City Engineer.

10. SCHEDULING AND CONSTRUCTION PROGRESS

A. General

For purposes of the Work under the Contract, the Contractor shall prepare and submit a Project Schedule ("Project Schedule") and Weekly Look Ahead Schedules ("WLA Schedules"), as further provided herein. The intent of the scheduling requirements is to provide a quantitative measure for performance and actual progress throughout the life cycle of the Project.

The Project Schedule and the WLA Schedules (hereinafter collectively referred to as the "Schedules") to be submitted shall represent a practical plan to complete the Work by the Final Completion Date or within the permitted Working Days, whichever is applicable under the Contract, and shall convey the Contractor's intent in the manner of prosecution and progress of the Work. The scheduling and execution of the Work in accordance with the Contract Documents are the responsibility of the Contractor. The Contractor shall involve and coordinate all Subcontractors and material Suppliers in the development and updating of the Schedules. The submittal of the Schedules shall be understood to be the Contractor's representation that the Schedules meet the requirements of the Contract Documents and that the Work will be executed in the sequence and duration indicated in the Schedules.

B. Project Schedule ("Project Schedule")

1. Project Schedule Format and Content

- a. The Project Schedule shall be electronically produced in the Critical Path Method (CPM) format, utilizing project scheduling software such as Primavera, Microsoft Project, SureTrak, Timeline or other equivalent software as approved by the Engineer.

- b. The Project Schedule shall be submitted in a time-scaled bar-chart (Gantt) format with logic lines shown on sheets no smaller than 11 inches wide by 17 inches long, nor larger than 22 inches by 34 inches long. An activity report in a tabular form showing the following information shall be submitted with bar-chart: activity ID, description, duration, early start, early finish, late state, late finish, predecessors, successors, constraints, percent complete, remaining duration and any other factors necessary such as those used to convert calendar days to Working Days for a Working Day contract.
- c. The Project Schedule shall show Work tasks, percentage completed, progress bars, the phasing, staging, and sequencing of Work activities, Substantial and Final Completion, any Interim Milestones, start and finish dates, and other breakdowns are required by the Engineer.
- d. Descriptions of scheduled activities shall include sufficient detail to identify the Work that is to be accomplished. Activity durations shall be expressed in whole days. Work that is to be performed by Subcontractors or other contractors or agencies shall be clearly defined.
- e. The Project Schedule shall meet any Interim Milestone dates or Substantial and Final Completion Dates that may be required by the Special Provisions and shall not extend beyond the contract completion time.
- f. The Project Schedule shall accommodate and consider seasonal restrictions (asphalt availability, planting dates, etc.), concrete curing/calendar days, acquisition of permits, lengthy lead-time orders for material and equipment, any project specifics as required by the Engineer, and weather conditions.
- g. All schedule submittals shall include three copies minimum.
- h. The first Project Schedule submitted by the Contractor will be reviewed for format, as well as content. The Engineer may require format changes. Once the format has been approved, all subsequent Project Schedules shall be submitted in the approved format.

2. Submission and Updating of Project Schedules

- a. The Contractor shall submit a preliminary, written Project Schedule at the Pre-construction Conference. The Contractor shall submit a final Project Schedule incorporating all comments one calendar week after the Pre-construction Conference.
- b. The Project Schedule must be received and approved by the Engineer prior to the initiation of any work by the Contractor. If the Project Schedule has not been received by the Engineer by the 8th calendar day after the Notice of Contract Approval, Working Days will be assessed and work will not be permitted.
- c. The Project Schedule shall be updated by the Contractor as required by the Engineer.

C. Weekly Look Ahead Schedule ("WLA Schedule")

- a. The Project Schedule shall be supplemented on a weekly basis by the submission of a WLA Schedule. WLA Schedules shall be submitted by the Contractor at the end of each week, or at such other time of the week as determined by the Engineer.
- b. The WLA Schedule shall include those Work activities that are scheduled to begin or are in progress for the next three weeks and shall be submitted on the form attached in the Appendix.
- c. Progress Payments may be withheld if the WLA Schedule is not received. Receipt of a progress payment does not relieve the Contractor of the responsibility to provide the WLA Schedule.

D. Construction Progress

Once work has started on a project area (street, surface water body or other project type), it must be diligently pursued until the Work is finished. Each successive phase of work will follow the preceding phase as closely as possible so that the time any one area is under construction is kept to a minimum.

Should the Contractor, in the Engineer's opinion, fail to complete the work as specified above, the Engineer may limit the work which has been started but not completed to any such amount as deemed reasonable by the Engineer. No extensions of time will be granted to the Contractor for not being permitted to open new areas to construction for this reason.

11. DELAYS AND EXTENSION OF TIME

A. General

The Contractor herewith specifically waives claims for damages for any hindrance, delay, or acceleration (except for accelerations described in Paragraph 11(D)(1), below). In lieu of such claims, the Contractor will be granted reasonable extensions of time for "excusable delays", as determined by the Engineer, and the City will not claim liquidated damages for the periods of such extensions.

B. Excusable/Non-excusable Delays

"Excusable Delays" are delays from occurrences that materially delay the progress of the Contractor on the Work, and that are not the result of the Contractor's own actions or inaction or that are not within the Contractor's control. Delays that result from the following non-inclusive list of occurrences are not considered Excusable Delays and will be considered "Non-excusable Delays":

- Incorrect assumptions or estimates made by the Contractor in the preparation of its bid (e.g. the underestimation by the Contractor of its production rates)
- Delays in the Contractor's submission of Contract documents, insurance and bonding documents, Schedules, and other submissions required of the Contractor
- Deficient scheduling or project management
- Inadequate or ill-timed provision of staffing, machinery or materials
- Construction mistakes and/or the correction of incorrect Work
- Equipment problems
- Failure of the Contractor to reasonably prevent and minimize drainage impacts on exposed soils
- The limitation of certain Work by the Engineer pursuant to the Contract (for example, pursuant to the ability of the Engineer under Section 2 Scheduling And Construction Progress of the City of Bloomington Standards Specifications for Construction to limit the opening of new streets until streets currently opened have been satisfactorily completed)
- Failure to prosecute and complete the work per the Schedules
- Failure to follow the plans, specifications, or other provisions of the Contract
- Review and approval/rejection of shop drawings, samples and product data.
- Subcontractor scheduling problems
- Shutdowns due to improper Work, or otherwise due to the Contractor's operation

- The Contractor's own procedures, timing, and method of conducting the Work, or other actions or inaction that cause or contribute to delays in the prosecution of the Work.

C. Extensions of Time

1. Extensions to be Granted for Excusable Delay

Upon the determination of the Engineer that an Excusable Delay has occurred, the Engineer shall grant an appropriate extension of time to the Substantial Completion Date, to the Final Completion Date, to Interim Milestones, or to the number of Working Days, as applicable. The extension shall be for a period as the Engineer shall determine to be reasonable under the circumstances.

2. Process for Obtaining Extensions

- a. If the Contractor believes that it may have encountered, or may be encountering, an event of Excusable Delay, or an event that may require it to accelerate construction, the Contractor shall notify the City within 48 hours of such event.
- b. If the Contractor desires an extension of time for the event of delay/acceleration, the Contractor shall submit a written request for time extension within seven (7) calendar days of the delay/acceleration event. Oral requests for or notifications of a requested extension are not acceptable and will not be considered. The request for time extension shall contain justification for the need for such extension so that the Engineer can determine whether an extension of time under the provisions of the Contract is reasonable, justified, and necessary.
- c. After receipt of such justification and supporting evidence, the Engineer will review the facts and advise the Contractor, in writing, of the granting or denial of the requested extension.
- d. If the Contractor fails to provide the notices and requests required herein within the indicated timeframes, the Contractor shall not be entitled to an extension of time, nor shall any claim for delay or acceleration based on the associated event be valid.

3. Non-Availability of Extensions for Certain Delays and Length of Certain Extensions

- a. Delays in activities that do not impact the critical path of the Work, as shown on the Schedules, will not be the basis for an extension.
- b. The granting of an extension for an Interim Milestone shall not be the basis of an extension to the Substantial Completion Date, the Completion Date, Working Days, or other Interim Milestones, unless the Engineer determines that such additional extensions are appropriately related and necessary.
- c. In some instances, the quantity of a particular type of Work required in the Project may significantly exceed the original estimated quantity provided by the Engineer for the bidding process. A quantity "significantly exceeds" the original estimated quantity when it exceeds the "reasonable limits" threshold defined in of Article 8 Estimate of

Quantities of these General Specifications. If the volume of work meets criteria outlined, the Engineer may grant an extension if requested in writing by the Contractor. In such cases, if the volume of specified Work either for the overall Contract or per item, measured in dollars, is increased over the total value or individual item value shown in the Contractor's bid at the time of award of Contract is made, the Contractor will be granted an extension proportionately equal to the increase in total value as calculated using the process outlined in the MnDOT Contract Administration Manual Section 5-591.340.

d. A delay caused to the Contractor by any suit or other legal action against the City will entitle the Contractor to an equivalent extension of time for the affected work, unless the period of such delay exceeds ninety (90) days. When such period is exceeded the City will, upon request by the Contractor in writing, either terminate the Contract, in part or total, or grant a further extension of time, whichever may at that time appear most desirable to both parties

D. Delay/Acceleration Claims; Attorney's Fees

1. Accelerations Not Involving Delay. There may be circumstances, not involving any events of actual delay, under which the City desires to accelerate the completion of the Work to dates that are earlier than those originally outlined in the Contract. In such cases, the City will notify the Contractor in writing of the need to accelerate the Work. Additional compensation for any such City directed acceleration would be negotiated by the parties and handled through a Work Order or Change Order.
2. Voluntary Accelerations. Compensation will not be provided for voluntary acceleration by the Contractor or the inability of the Contractor to voluntarily accelerate the Work.
3. No Oral Agreements to Accelerate or for Extensions of Time. All requests and approvals of extensions of time for claimed delays shall be in writing as provided herein; requests and extensions not in writing shall not be valid. Additionally, oral agreements between the City and the Contractor with respect to acceleration shall be of no effect.
4. Attorney's Fees. The Contractor will be responsible for payment of the City's Attorney's fees if the Contractor initiates a lawsuit for a delay or acceleration claim and the claim is not sustained.

12. FAILURE TO COMPLETE WORK ON TIME

Should the Contractor fail to complete the work on or before the original date set forth for completion in the Contract, or on or before the corrected date as granted by extensions of time for completion, the City may permit the Contractor to proceed and in such case there shall be deducted from any monies due (or that may become due the Contractor) a sum as specified in the Special Provisions for each and every calendar day, exclusive of Sundays and City Holidays, that the work shall remain uncompleted. This sum shall be considered and treated, not as a penalty but as the cost of field and office engineering, inspection and liquidated damages.

Permitting the Contractor to continue and finish the work or any part of it after the time fixed for its completion, or after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the City of any of its rights under the Contract.

Neither by the taking over of the work by the City nor by the termination of the Contract, shall the City forfeit the right to recover liquidated damages from the Contractor or surety thereof for failure to complete the Contract.

If the Contractor should neglect to prosecute the work properly, or fail to perform any provisions of the Contract; the City, after three days written notice to the Contractor, may without prejudice to any other remedy the City may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor, provided, however, that the Engineer shall approve both such action, and the amount charged to the Contractor.

13. ABANDONMENT OF THE WORK

If the Contractor abandons the work for any cause other than failures of the City to make monthly progress payments or refuses to comply with the provisions of the Plans and Specifications, the City has the right to notify the Contractor's surety to complete the work in accordance with the aforesaid Plans and Specifications. In the event no liens or claims have been filed and the City fails to make progress payments, the Contractor has the option, of ceasing operations until payments are resumed by notifying the City of such intentions to cease operations for this cause.

Should the Contractor abandon the work, fail or refuse to complete the work embraced in this contract, or fail to pay just claims for labor and materials, the City reserves the right to charge against the Contractor all extra legal, engineering or other costs caused by such abandonment, failure or refusal. The legal costs will also include the City's cost of prosecuting or defending any suits in connection with such abandonment, failure or refusal and nonpayment of claims wherein the City is made co-defendant and the Contractor agrees to pay all costs, including reasonable attorney fees.

14. MONTHLY ESTIMATES

Estimates will be prepared by the Engineer on or about the fifth day of the month for all work completed to the end of the preceding month. Progress payments will be made on or before the 15th day of the month in cash or equivalent. In making such partial payments, subject to the exceptions hereinafter described, the City will retain five per cent of the total amount earned as indicated in said partial estimate until the Project is substantially completed. The retainages and payments are to be in accordance with S.F. 1665 Chapter No. 464 amending Minnesota Statutes 1978 Sections 161.322; 162.04; 162.10; and M.S.A. SECTION 429.041 Subd. 6.

Progress payments will be prepared as accurately as the available information will permit but the only estimate that is binding will be the semi-final estimate. Before the semi-final estimate is prepared all quantities will be reviewed and rechecked; by signing the semi-final estimate, the City and Contractor agree on quantities and contract changes.

Monthly estimates may include the value of acceptable materials required in the construction, which have been delivered on the site of the work (materials on hand), and for which acceptable provisions have been made for preservation and storage. Invoices for these materials must be submitted prior to inclusion in an estimate. Such material when so paid for by the City shall become the property of the City, and in the event of the default on the part of the Contractor, the City may use or cause to be used such materials in construction of the work provided for in the Contract. The amount paid by the City for materials on hand shall reduce as the material is used in the work.

If no claims or liens have been filed, and lien waivers from the Contractor and all subcontractors and material suppliers have been provided, the retainage will be paid within 90 days after the final estimate. Should any liens or claims be filed, an amount at least equal to the amount of the lien, or claim, will be held until a satisfactory agreement is reached between the City, the Contractor, and the Contractor's surety.

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

- (a) Defective work not remedied and work not completed.
- (b) 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 material or labor furnished by others.
- (d) A reasonable doubt that the Contract can be completed for the balance yet unpaid.
- (e) Evidence of damage to another Contractor or private property.

The City may disburse and shall have the right to act as agent for the Contractor in disbursing such funds as have been withheld pursuant to this paragraph to the party or parties who are entitled to payment there from but the City assumes no obligation to make such disbursement. The City will render to the Contractor a proper accounting of all such funds disbursed.

Before the City will make payment on the final estimate, the Contractor shall file with the City Clerk a notarized certificate to the effect that all labor, material, and other costs have been paid in full and a notarized statement to the effect that all Minnesota State Withholding taxes have been paid. Standard forms for these two statements are shown at the end of the General Specifications. The Contractor is also advised that the City will accept the IC-134 form that is completed on line. The internet address for the link is <http://www.taxes.state.mn.us/taxes/withholding/>. It will be necessary for the contractor to put in tax id and social security # to use the form.

15. CONTRACTOR, ENGINEER, INSPECTOR RELATIONSHIPS

The Contractor will be responsible for planning the construction means, controls, techniques, sequences, schedules, procedures, construction safety and materials; however, these factors shall be done in coordination and cooperation with the Engineer. All phases of the Project shall proceed in accordance with OSHA safety requirements. The presence of the City Engineer or Project Engineer, or authorized representative thereof, on the job site shall not release the Contractor of this responsibility or hold the Contractor harmless for the quality of workmanship or defects in materials. The Engineer shall have the authority to decide questions, which arise about quality and acceptability of materials furnished and work performed.

16. CONTRACTOR'S RESPONSIBILITIES

The Contractor shall furnish all necessary machinery, tools, labor and material required, and shall fully complete the work in accordance with the plans, specifications and detail drawings for the

price bid. The entire work to be performed under the Contract for this improvement is at the Contractor's risk, and they assume the responsibility for all damages to the work or to contiguous property. The Contractor shall have charge of and be responsible for the entire improvement until its completion and acceptance. It shall be the Contractor's responsibility to maintain all stages of work in a safe and suitable condition at all times, including nights, weekends, and holidays. The Contractor shall make observations of the work during such periods as are necessary to insure proper care of the work. The Contractor shall be liable for any defects, which may appear, or be discovered on the work prior to the termination of the guarantee period.

The Contractor shall designate one person who will be in charge of the Project and to whom the Inspector or Engineer shall give guidance as to the intent of the plans and specifications. If any person employed on the work shall refuse or neglect to obey the directions of the City Engineer, or duly authorized representative thereof, in anything relating to the work, or shall appear to be incompetent, disorderly or unfaithful, employee shall, upon the request of the City Engineer, not be employed on any part of the remaining work in the City.

Precaution shall be exercised at all times for the protection of persons (including employees) and property. The safety provisions of applicable laws and building and construction codes shall be observed. Machinery, equipment, and all hazards shall be guarded in accordance with the safety provisions of the Manual of Accident Prevention in Construction, published by the Associated General Contractors of America, to the extent that such provisions are not in contravention of applicable laws.

17. DAMAGE TO EXISTING IMPROVEMENTS

Any damage done to existing improvements during the progress of this improvement shall be repaired by the Contractor under the direction of the Engineer. Such repairs shall be made according to the requirements of the Standard Specifications of the City for various types of improvements or classes of work required.

The Contractor shall be entirely responsible for the protection of all improvements that are not designated by the Engineer to be removed for proper construction of the Project.

18. RESPONSIBILITY FOR DAMAGE CLAIMS

The Contractor shall indemnify, defend and hold harmless the City of Bloomington, their officers, agents and employees from all suits, actions, and claims of any character brought because of injuries or damages received or sustained by any person, persons, or property on account of the operations of the said Contractor; or on account of or in consequence of any neglect in safeguarding the work; or through use of unacceptable materials in constructing the work; or because of any act or omission, neglect, or misconduct of said Contractor; or because of any claims arising or amounts recovered from infringements of patent, trademark, or copyright; or because of any claims arising or amounts recovered under the Workers Compensation Act; or under any other law, ordinance, order, or decree.

Removal of Liens

Any liens filed on the Project which are not promptly removed constitute a default. To remove a lien the Contractor is required to post a bond, deposit money, or meet any other statutory requirement.

Partial Occupation by Owner

Whenever it may be useful or necessary, Contractor, City shall be permitted to occupy and use any portion of the work which has been either partially or fully completed by Contractor before final inspection and acceptance there by City, but such use or occupation shall not relieve Contractor of its guarantee of said work and materials nor of its obligation to make good at its own expense any defect in materials and workmanship which may occur or develop prior to Contractor's release from responsibility to the City.

Right to Audit

As to all work which the Contractor may perform on a reimbursable basis or for which Contractor makes a claim for additional compensation or for which a claim is asserted by any third party or injured person the City will have the right at all reasonable times and places, to inspect, copy and audit any of Contractor's books, accounts, time cards, records of transactions, estimates, schedules, correspondence or any other records or documents which may have a possible bearing on the performance of such work of claim.

Further right of examination for all of Contractor's work will include inspection at all reasonable times of the Contractor's plant, or such parts thereof as may be engaged in the performance of the contract. All accounts, documents and records relevant to this contract will be retained by the Contractor for three years after completion of the work, unless a longer period is required by law.

Preservation of Evidence

Contractor is required to give the City notice as soon as any type of accident, incident, or claim is asserted against Contractor or Owner and to preserve all evidence and to allow the City the opportunity to fully investigate all incidents prior to any evidence being moved, altered, covered up or destroyed in any manner.

Contract Obligations To Survive Performance

Obligations, including but not limited to, construction defect claims, personal injury claims, warranty claims and maintaining insurance, of the Contractor shall continue in place and shall survive as long as any contractual obligation exists.

19. PROTECTION AND RESTORATION OF PROPERTY

Where the work passes over or through private property, the City will secure access rights or easement.

The Contractor shall not enter upon private property for any purpose without previously obtained permission of the owner. The Contractor shall be responsible for the preservation of, and shall use every precaution to prevent damage to all trees, shrubbery, plants, lawns, fences, culverts, bridges, pavements, driveways, sidewalks, etc.; all water, sewer, gas lines; all conduits; all overhead pole lines or appurtenances thereof; and all public or private property along or adjacent to the work.

The Contractor shall notify the proper representatives of any public utility, corporation, and company or individual, not less than forty-eight hours in advance of any work which might interfere with the operation on their property along or adjacent to the work. The Contractor shall be responsible for all damages or injury to property resulting from its acts, omissions, negligence or misconduct or due to the Contractor's non-execution of the work, or at any time due to defective work or materials. The Contractor shall restore or have restored at its own cost and expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding, or otherwise restoring as may be directed, or make good such damage from injury in a manner acceptable to the City or the Engineer. In case of failure on the part of the Contractor to restore such property or make good such damage or injury, the Engineer may, upon forty-eight hours' written notice under ordinary circumstances and without notice when a nuisance or hazardous condition results, proceed to repair, rebuild or otherwise restore such property as may be determined necessary, and the cost thereof will be deducted from any monies due to the Contractor under this Contract and if not so deducted, the Contractor will be obligated to forthwith reimburse the City for the cost thereof.

Prior to construction, the Contractor shall obtain field locations or other assistance as may be required to determine the existence and location of gas lines and other private utilities as well as public utilities of the City, County, or State which may be underground or overhead.

The City has attempted to include all available information that it has as to subsurface conditions, structures and utilities; surface materials and structures; and overhead structures on the plans to assist the bidder in properly evaluating the amount and character of the work that might be required. Such information is given, however, as the best information available to the City, and is not guaranteed. The Contractor, by careful examination, including contacting locators for utility companies and digging in advance of construction as necessary, shall satisfy itself as to the nature and location of the work; the character of equipment and facilities needed preliminary to and during the prosecution of the work; the general and local conditions; the exact location of existing facilities; and all other matters which can in any way affect the work under this Contract.

Aerial photographs, contour maps and other information are available at the City Engineer's office for examination by the bidders.

The Contractor shall not claim or be entitled to receive compensation for any damages sustained by reason of the inaccuracy or the omission of any of the information given on the drawings, relative to the surface, overhead, or underground structures or by reason of such Contractor's failure to properly protect and to maintain such structures.

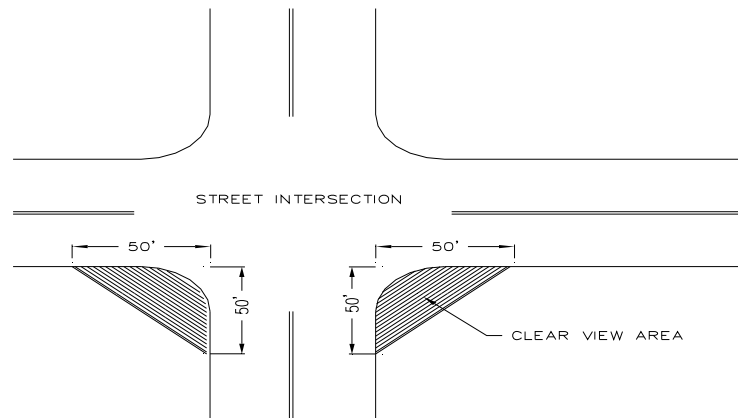
The Contractor is to exercise extreme care in crossing or working adjacent to all utilities and shall be responsible to protect and maintain their operation during the time the work is in progress. The Contractor shall restore, at their own expense, any public structures such as watermains, water connections and appurtenances, sewers, manholes, catch basins and sewer connections which are damaged or injured in any way by the Contractor's acts.

The Contractor shall defend, indemnify and hold harmless the City of Bloomington, its officials, employees and agents, from any and all claims, causes of action, lawsuits, damages, losses, or expenses, including attorney fees, arising out of or resulting from the Contractor's (including its officials, agents, or employees) performance of the duties required under this Agreement, provided that any such claim, damages, loss or expense is attributable to bodily injury, sickness, diseases or death or to injury to or destruction of property including the loss of use resulting there from and is caused in whole or in part by any negligent act or omission or willful misconduct of Contractor.

20. CONTRACTOR'S PRIVILEGES IN STREETS, ALLEYS, AND RIGHTS-OF-WAYS

For the performance of the Contract, the Contractor will be permitted to occupy such portions of the streets or alleys, or other public places, or other rights-of-ways, as shown on the plans, or as permitted by the City 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 the 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 unobstructed and shall not inconvenience occupants of adjoining property.

On any corner formed by intersecting streets, the Contractor shall not permit the placement or storage of materials and equipment or other obstructions to a height greater than three feet above the level of the center of the adjacent intersection within the area of land formed on the corner of the lot by measuring a distance of 50 feet along each curb line (or, if none, then each boundary line of the roadways) from the intersection of such lines (this is typical in all quadrants of intersections), as shown in the figure below:



Site-specific conditions may require adjustments by the Engineer in the size and location of the clear view area as described above.

Other Contractors of the City may, for all purposes required by their contracts, enter upon the work and premises used by the Contractor, and the Contractor shall give to other Contractors of the City all reasonable facilities and assistance for the completion of adjoining work. The area occupied by the Contractor shall be restored to original condition and the cost of restoration shall be incidental.

Any additional ground desired by the Contractor shall be provided by, and at the expense of, the Contractor.

Where the work encroaches upon any right-of-way of any railway or State or County Highway, the City will secure the necessary easement for the work. Where railway tracks or such highway are to be crossed, the Contractor shall observe all the regulations and instructions of the railway company and Department of Transportation as to the methods of doing the work, or precautions for safety of property and the public. All negotiations with the railway company and Department of Transportation, except for the easement, shall be made at the Contractor's expense. The Contractor will not be paid direct compensation for such railway or highway crossing unless so provided in the Special Provisions and Bid. The City may elect to obtain the permit and the Contractor shall be so notified.

21. WORK IN STORMS

The Engineer shall have the right to stop work during rain or snow storms and all freshly placed work, unless otherwise protected, shall be protected by canvas or other suitable covering in such a manner as to prevent running water from coming in contact with it. Sufficient covering shall be provided and kept ready for this purpose. The Contractor will not be entitled to extra compensation for work so stopped or delayed by the Engineer.

Work shall be done at night only in case of emergency and only upon the direction of the Engineer. The Engineer has the right to order work to be carried on at night, if in the Engineer's opinion, it is in the best interest of the City. Work performed after dark shall be adequately illuminated and suitable and sufficient lighting facilities shall be provided for this work. No extra compensation will be allowed the Contractor for work under this item.

22. USE OF EXPLOSIVES

If it is necessary to use explosives in the performance of the work, the Contractor shall take out permits and comply with all the laws, ordinances and regulations governing same. The Contractor shall fully protect all completed works as well as all overhead, surface, or underground structures and shall be liable for any damage done to the work or to other structures on public or private property and injuries sustained by persons by reason of the use of explosives during Contractor's operations. Explosives shall be handled, used and fired only by experienced personnel. All firing shall be done by electricity. All explosive supplies shall be safely stored and protected in an approved manner. All such storage places shall be marked clearly "DANGEROUS - EXPLOSIVES". Caps or other exploders shall not be stored at the place where dynamite or other explosives are stored.

23. NOISE ELIMINATION

The Contractor shall eliminate noise to as great an extent as possible at all times. Air compressing plants shall be equipped with silencers and the exhausts of all gasoline motors or other power equipment shall be provided with mufflers in accordance with current government regulations. The Contractor shall also be in conformance with the City noise ordinance (Chapter 10, Article IV). The Contractor shall be responsible to make application for a variance from Bloomington's noise ordinance if the proposed hours of work are outside of those shown below.

Weekdays - Working hours 7:00 a.m. to 10:00 p.m.

Saturday - Working hours 9:00 a.m. to 9:00 p.m.

Sunday - No construction activities

The Contractor is cautioned that moving or mobilizing equipment outside of the working hours is a violation of the noise code.

24. SANITARY PROVISIONS

The Contractor shall comply with all laws, rules and regulations of the State, and Local Health Authorities and shall take the necessary precautions to avoid unsanitary conditions.

Suitable sanitary conveniences for the use of all persons employed on the work, properly screened from public observation, shall be provided and maintained by the Contractor.

25. FOSSILS

If any fossils or treasure or other unusual or valuable geological formations or archeological remains are found in the progress of excavating, such fossils, treasure or samples of geological formations shall be carefully preserved by the Contractor who shall convey such items to a State or Federal Agency concerned with their preservation and study after notifying the Engineer. These items shall become the property of said State or Federal Agency.

26. RIGHT TO USE IMPROVEMENT

The City shall have the right to open to traffic or public use any portion of this improvement prior to the final completion of the whole work, but the use of any part or portion of this improvement by the City of Bloomington, by the public, or by any person or party, shall not be construed as acceptance of any portion of the work prior to the time of final completion and acceptance of the entire improvement.

27. MONUMENTS

The Contractor shall not disturb any monuments found on the line of this improvement until ordered by the Engineer. The Engineer, or authorized representative, will furnish and set all new monuments required along the line of this improvement, but the Contractor will be responsible for their protection.

In case the Contractor disturbs any monument without orders from the Engineer, the Contractor will be charged the cost of the replacement survey and other work required to relocate the same.

28. CONSTRUCTION STAKES, LINES AND GRADES

All work under this Contract shall be constructed in accordance with lines and grades shown on the drawings and as established by the Engineer. These lines and grades may be modified by the Engineer as provided in Article 5 of these General Specifications.

The Contractor shall render such assistance to the Engineer or Inspector as may be required to accomplish the staking for proper execution of the work which may include, but is not limited to moving stockpiles, clearing and grubbing or other facilitating the installation of the stakes.

The Contractor shall give the Engineer or Inspector sufficient notice (two working days, or more as notified in writing by the Engineer) of need for the establishment of line and grade. After lines and grades for any part of the work have been set by the Engineer, or authorized representative, the Contractor shall be held responsible for the proper execution of the work to such lines and grades. All stakes or other marks given shall be protected and preserved by the Contractor until the Engineer or Inspector authorizes their removal. The Contractor shall, without cost to the City, correct any mistakes caused by their unauthorized disturbance or removal. The Engineer or Inspector may require that work be suspended at any time when, for any reason, such marks cannot be properly followed. In case the Contractor disturbs any stake without orders from the Engineer, the Contractor will be charged the cost of the replacement survey and other work required to relocate the same.

No additional compensation shall be allowed to the Contractor for any claims of crews being held up or there after accelerated because of lack of line and grade stakes unless a written request is submitted to the Engineer at least two working days in advance and is following a previously approved schedule of work.

29. INSPECTION

The Contractor shall keep the Inspector advised as to work schedule. Any work performed at times or places outside of the established work schedule shall be regarded as contrary to and outside of the terms of this Contract and the Engineer or an authorized representative thereof may order such work torn out or removed and replaced without obligation on the part of the City to pay for the same.

Whenever the Engineer assigns an Inspector to the Project, it shall be the duty of the Inspector to inspect the construction of the improvement and all materials used on the improvement to determine if the work is proceeding in accordance with the contract documents.

No material of any kind shall be used on any part of this improvement until it has been inspected and approved by the Engineer or the Inspector. All rejected materials shall be removed from the line of this improvement by the Contractor within two working days after its rejection.

Instructions given by the Inspector shall be respected and executed by the Contractor, but no Inspector shall have the power to waive the obligations of the Contractor to furnish good material or to do good work, as herein specified. Whenever improper materials are being used, or improper work is being done, the Inspector shall have the authority to suspend operations until corrective measures are taken.

Failure to condemn any inferior material or work at the time of its use on construction shall not be construed as an acceptance of the same, but the Contractor shall upon notice from the Engineer at any time prior to the final acceptance of the improvement immediately tear out, remove and properly reconstruct, at the Contractor's own cost, any portion of this improvement which the Engineer may decide to be defective and the Contractor will be held wholly responsible for the safety, proper construction and protection of the entire improvement until the same has been finally accepted and paid for by the City of Bloomington.

The Engineer or Inspector will make final inspection of all work included in the Contract or any portion thereof, as soon as practicable after written notification by the Contractor that such work is nearing completion. If such work is not acceptable at the time of inspection, the Engineer or

Inspector will advise the Contractor in writing as to the particular defects to be remedied before such work can be accepted. If, within a period of ten (10) days after such notification, the Contractor has not taken steps to speedily complete the work as directed, the Engineer may without further notice and without in any way impairing the Contract, make such other arrangements as the Engineer may deem necessary to have such work completed in a satisfactory manner. The cost of completing such work shall be deducted from any monies due, or which may become due the Contractor on the Contract.

30. 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 rights, and shall save the City harmless for loss on account thereof except such claims of suits arising by reason of patent infringement or unauthorized 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 patent, the Contractor shall be responsible for such loss unless the Contractor promptly gives such information to the Engineer.

31. ASSIGNMENT OF CONTRACT

No portion of the Contract shall be sublet, assigned, or otherwise disposed of except with the written consent of the City. Requests for permission to sublet, assign, or otherwise dispose of any portion of the Contract shall be in writing and accompanied by the written consent of the surety. Written consent to sublet, assign, or otherwise dispose of any portion of the Contract shall not be construed to relieve the Contractor of any responsibility for the fulfillment of the Contract. All subcontractors shall be regarded as agents of the Contractor and the latter shall be responsible for all work and material furnished and any indebtedness incurred by such agents.

The Contractor agrees that it must pay any subcontractor within ten days of the prime contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Contractor agrees that it must pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. 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 prime contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a prime contractor must be awarded its costs and disbursements, including attorneys fees, incurred in bringing the action.

32. FORFEITURE OF CONTRACT

If at any time the Engineer is of the opinion that the work is unnecessarily delayed, and will therefore not be finished within the prescribed time, the Engineer shall notify the Contractor, in writing, to that effect. If the Contractor does not within five days thereafter take such measures as will, in the judgment of the Engineer, insure the satisfactory completion of the work, the City may then notify the said Contractor to discontinue all work under the Contract for this improvement, and the Contractor shall immediately respect such notice and stop work, and cease to have any rights to the possession of the grounds.

The City may thereupon re-let said contract or employ such forces as they deem advisable to complete the work, and charge the cost of all labor and materials necessary for such completion to

the said Contractor, and the amount so charged shall be deducted and paid by the City out of such monies as may be then due, or afterwards become due, to the said Contractor, under and by virtue of the Contract for this improvement.

In case such amount so paid by the City is less than the sum which would have been payable to the Contractor if the Contract has been fulfilled by such Contractor, then the Contractor shall be entitled to receive the difference, and in case such amount is greater, the said Contractor shall pay to the City the amount of such excess so due. If the Contractor shall assign the Contract for this improvement without the written consent above required, or shall abandon the work thereon, or shall neglect or refuse to comply with these specifications and the instructions of the Engineer relative thereto and with the ordinances of the City; the City Council shall have the right to annul and cancel said Contract and to re-let the work, or any part thereof, and such annulment shall not entitle the Contractor to any claim for damages on account thereof, nor shall it affect the right of the City to recover damages which may arise from such failure.

In case the City assumes control of the work under the Contract for this improvement for any of the above reasons, the City shall have the right to seize all machinery, tools and materials on hand belonging to the Contractor, and to use the same to complete the work at the Contractor's expense.

33. INJUNCTIONS

If by reason of any court proceedings, instituted by any third party or by the City, affecting, directly or indirectly, the construction or completion of any portion or portions of this improvement, the Contractor or the City of Bloomington shall be unable to construct or complete said portions of the work, and if in consequence thereof it shall, at the discretion of the City Council, be impractical to construct or complete any other portion or portions thereof; the Contractor shall, and does hereby waive any and all claims for damages because of such inability to complete the improvement as planned. The City Engineer shall have the right to report such improvement as completed and file a final estimate thereof as provided for in the full completion of other improvements in the City, and the Contractor shall accept in full payment of the work upon said improvement, and as a cancellation of the Contract thereof, a sum of money determined in strict accordance with the Contractor's bid for the Contract, on the basis of the work actually completed up to the time of stopping thereof.

34. DISPUTES AND LITIGATION

Any questions arising between the Inspector placed upon the work by the Engineer and the Contractor or Superintendent or Foreman as to the meaning and intent of any part of the Plans or Specifications for this improvement shall be immediately brought to the attention of the Engineer and will be adjusted by the Engineer.

Failure on the part of the Engineer, or the authorized representative thereof, to discover and condemn or reject bad or inferior work or materials shall not be construed as an acceptance of any such work or material, or the part of the improvement in which the same may have been used.

To prevent disputes and litigation, it is further agreed by the parties hereto that the Engineer shall determine the volume and quality of the several kinds of work embraced in these improvements. The Engineer shall decide all questions relative to the execution of the work and the interpretation of the Plans and Specifications.

In the event of a dispute between the City and the Contractor, the parties hereto agree that the City Engineer shall determine the volume and quality of the several kinds of work embraced in the Improvements outlined in the Specifications and Special Provisions for the Project. If no agreement can be reached, the City and the Contractor agree to submit all claims, disputes and other matters in question between the parties arising out of or relating to this Agreement to mediation. The mediation shall be conducted through the Mediation Center, 1536 Hewitt Avenue, St. Paul, MN, 55104. The parties hereto shall decide whether mediation shall be binding or non-binding. If the parties cannot reach agreement, mediation shall be non-binding. In the event mediation is unsuccessful, either party may exercise its legal or equitable remedies and may commence such action prior to the expiration of the applicable statute of limitations.

35. PERFORMANCE AND GUARANTEE BOND

The Contractor shall furnish within ten (10) days after notice of award, two bonds; a performance and payment bond each in the amount of the full contract price, in compliance with State statutes to guarantee the faithful performance of the Contract and the payment of all labor, mechanics, subcontractors and material. The performance bond shall cover a minimum period of one year after acceptance by the City, as respects faulty workmanship and materials. The performance bond and payment bond shall be furnished by a corporate surety company authorized to do business in the state of Minnesota and acceptable to the City subject to the approval of the City Attorney as to form.

The Contractor is advised that the AIA 312 Performance Bond is not acceptable. An AIA 311 Performance Bond is acceptable. The AIA 312 Payment and Materials bond is acceptable.

The amount of the bonds shall be increased to reflect the amount of any change orders awarded to the Contractor. The cost of the increased amount of the bonds shall be incidental to the various contract unit prices.

36. CONTRACTOR'S INSURANCE

The Contractor shall not commence work under this Contract until all insurance required under this article has been obtained and until copies of policies and certificates required by this article are submitted to the Office of the City Clerk, 1800 West Old Shakopee Road. The Contractor shall not allow any subcontractor to commence work until the insurance has been obtained and copies of policies and certificates submitted to the City Clerk.

a) Comprehensive General Liability and Property Damage Insurance

The Contractor shall take out and maintain at their own cost and expense, comprehensive general liability and property damage insurance, during the period from the commencement until final completion of the work under this contract. Said insurance shall protect the Contractor, any subcontractor performing work covered by the Contract, and the City from claim for property damage which may arise from operations under this Contract, whether operations be made by the Contractor, subcontractor, or by anyone directly or indirectly employed by either of them. This also includes claims arising by reason of any injury or damage sustained after the Contractor has completed the work or left the site thereof. The comprehensive general liability insurance shall be in an amount not less than \$1,500,000 for injuries, including accidental death, to any one person, and in the minimum amount of \$1,500,000 for injuries,

including death, for any one accident or occurrence. The property damage insurance shall be in the minimum amount of \$1,500,000.

b) Worker's Compensation Insurance

Worker's Compensation Insurance shall be as required by the laws of the State of Minnesota.

c) Automobile Insurance

Contractors shall secure and maintain during the life of this Contract automobile public liability insurance in the amount of \$500,000 for bodily injuries, including death, for any one person or \$1,500,000 per occurrence and automobile property damage insurance in the minimum amount of \$1,500,000. Each motor vehicle, including hired vehicles, engaged in operation within the terms of this Contract shall be covered by such automobile insurance.

d) Certificates

The City will be named as an additional insured on the Contractor's insurance policies. Copies of all policies shall be deposited with the City Clerk and certificates evidencing such insurance shall be filed with the City Clerk. The certificates shall be executed by the insurer and shall expressly stipulate that the policies are non-cancelable without thirty days notice in writing to the City shall be filed with the City Clerk, and that the policy not be cancelable until documents have been supplied to the City Clerk for policies to replace those being canceled. The canceling company and/or the replacing company shall be responsible for all work completed prior to the cancellation of policies. Certificates for liability policies must show that the City is one of the parties insured by the respective policies. All insurance policies and certificates shall be submitted prior to the execution of the Contract and shall be subject to the approval of the City Attorney.

The Contractor shall furnish to the City updated certificates during the term of the Contract as insurance policies expire. If the Contractor fails to furnish proof of insurance coverages, the City may withhold payments and/or pursue any other right or remedy allowed under the Contract, law, equity, and/or statute.

37. LABOR

None but competent labor shall be employed on this work. Wherever mechanical work is required, it shall be performed by skilled labor.

The Project Supervisor or other person directing the work shall be competent, sober and reliable, and shall extend every facility to the Engineer to enable the Engineer to properly discharge the duties thereof, and shall furnish any help as may be necessary to facilitate the inspection of materials.

The Contractor will not be allowed added compensation for any work performed on Saturdays, Sundays, or legal holidays.

38. INDEPENDENT CONTRACTOR

It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting the Contractor as the agent, representative or employee of the City for any purpose or in any manner whatsoever. The Contractor is to be and shall remain an independent contractor with respect to all services performed under this contract. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing services under this contract. Any and all personnel of the Contractor or other persons while so engaged, and any and all claims whatsoever on behalf of any such person or personnel arising out of employment or alleged employment including, without limitation, claims of discrimination against the Contractor, its officers, agents, contracts or employees shall in no way be the responsibility of the City; and the Contractor shall defend, indemnify and hold the City, its officers, agents and employees harmless from any and all such claims regardless of any determination of any pertinent tribunal, agency, board, commission or court. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from the City, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Unemployment Compensation, disability, severance pay and PERA.

39. NONDISCRIMINATION CLAUSE

The City hereby notifies all bidders that businesses owned and controlled by minorities or women will be afforded maximum feasible opportunity to submit bids and/or proposals. The City also notifies all persons that no one will be subjected to discrimination on the basis of race, color, creed, religion, ancestry, national origin, sex, disability, age, marital status, or status with regard to public assistance.

If the contract is awarded to the bidder, the bidder shall adhere to Chapter 2, Article VII of the City Code which requires that the following provisions be incorporated in the Contract.

(1) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;

(2) that no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;

(3) that a violation of this section is a misdemeanor; and

(4) that this contract may be canceled or terminated by the City, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

The Contractor agrees to comply with the Americans With Disabilities Act (ADA) and agrees to hold harmless and indemnify the City from costs, including but not limited to damages, attorney's fees and staff time, in any action or proceeding brought alleging a violation of ADA. The City of Bloomington does not discriminate on the basis of disability in the admission or access to, or treatment or employment in, its services, programs, or activities.

Upon request accommodation will be provided to allow individuals with disabilities to participate in all City of Bloomington services, programs, and activities. The City has designated coordinators to facilitate compliance with the Americans with Disabilities Act of 1990, as required by Section 35.107 of the U.S. Department of Justice regulations, and to coordinate compliance with Section 504 of the Rehabilitation Act of 1973, as mandated by Section 8.53 of the U.S. Department of Housing and Urban Development regulations. for information contact the Human Services Division, City of Bloomington, 1800 West Old Shakopee Road, Bloomington, Minnesota 55431; telephone: 952 563-8700; TDD: 952 563-8740.

40. AIR, LAND AND WATER POLLUTION

The Contractor shall schedule and conduct construction operations in a manner that will prevent, control, minimize or abate pollution of air, land and water in accordance with all governing laws and ordinances. The Contractor shall comply by the requirements of Mn/DOT's Standard Specifications for Construction Section 1717 regardless whether or not an NPDES permit for the work is required.

Wherever a bituminous mixing plant, aggregate crusher or similar operation is to be conducted, the Contractor shall be acquainted with the state and local conditions and regulations pertaining to air pollution before commencing operations.

The Contractor shall take all necessary precautions and actions to prevent pollution of both flowing and impounded waters of the State with any particulate or liquid matter that may be harmful to fish and wildlife or detrimental to public use of the water. Construction operations, including operations in borrow pits or waste areas and construction of haul roads, shall be scheduled and conducted so as to minimize soil erosion and prevent silting or muddying of public waters.

41. GUARANTEE

The Contractor shall be held responsible for any and all defects in workmanship and materials which may develop in any part of the entire installation furnished under this contract. Upon written notice by the Engineer or an authorized representative thereof, the Contractor shall immediately replace and make good without expense to the City any such faulty parts and materials installed not in accordance with these plans and specifications during the period of one year from the date of final acceptance of the Project. "Final acceptance of the Project" shall be interpreted as the date in which all punch list items are agreed upon and deemed final. On Projects with landscaping items this final acceptance period can not occur until the plant establishment period has elapsed.

Should the Contractor fail to make good the defective parts within a period of thirty (30) days of such notification after written notice has been given such Contractor, the City may replace these parts, charging the expense of same to the Contractor.

42. DRILLING OF TEST HOLES

Attention is called to Section 16.32 of the City Code of Bloomington, which states, in part, "It shall be unlawful for any person other than authorized City employees to dig up, break, excavate, tunnel, drill, bore, undermine or in any manner break up any public way or public ground or to make or cause to be made any excavation in or under the surface of any public way or public ground, or to place, deposit or leave upon any public way or public ground any earth or excavated material obstructing or tending to interfere with the free use of the public way or public ground unless such person shall first have obtained an excavation permit therefore from the City Engineer as herein provided."

Any person drilling test holes within the area of this Project must secure a permit for such test holes from the Office of the City Engineer. The Contractor must also notify all utility companies of the Contractor's intention to drill so that the Contractor will become informed on the location of all underground utilities.

A performance bond in the amount of \$5,000 is required prior to issuance of any such permit.

This provision does not apply to work performed as part of the Project after the Contract is let.