

RAMSEY COUNTY PROCUREMENT CONTRACT

Parks and Recreation

PARKS&REC-Admin
2015 Van Dyke St
Maplewood MN 55109
USA

Supplier 0000023235
BERWALD ROOFING INC
2440 N CHARLES ST
NORTH SAINT PAUL MN 55109-3049
USA

Open **Dispatch via Print**

Contract ID CC003231		Page 1 of 1	
Contract Dates 11/13/2024 to 11/12/2025	Currency USD	Rate Type CRRNT	Rate Date PO Date
Description: WATER PATROL ROOF REPLACEMENT		Contract Maximum 714,700.00	

Tax Exempt? N Tax Exempt ID:

Contract Lines:

Line #	Supplier Item	Item Desc	UOM	Minimum Order Qty	Amt	Maximum / Open Qty	Amt
1		Remodeling Construction Services	EA	1.00	0.00	0.00	0.00

PROVIDE ALL SUPPLIES, EQUIPMENT, MATERIALS , LABOR AND INCIDENTALS REQUIRED FOR THE RAMSEY COUNTY SHERIFF'S WATER PATROL STATION ROOF REPLACEMENT PROJECT IN ACCORDANCE WITH THE SOLICITATION RFB-PRMG32059-0-2024/KB RELEASED 8/28/2024 (WHICH INCORPORATES THE PROJECT SPECIFICATIONS AND PLANS) AND ALL ADDENDA, AND CONTRACTOR SOLICITATION RESPONSE DATED 10/10/2024.

TOTAL CONTRACT AMOUNT - \$714,700.00

CONTRACTOR CONTACT: EUGENE BERWALD
CONTRACTOR PHONE#: 651-777-7411
CONTRACTOR E-MAIL: EUGENEB@BERWALDROOFING.COM

COUNTY CONTACT: NICK FAHEY
COUNTY PHONE#: 612-499-0385
COUNTY E-MAIL: NICK.FAHEY@CO.RAMSEY.MN.US

REQ# PRMG32059

The Ramsey County General Contract/Agreement Terms and Conditions is attached hereto and incorporated by reference. This Ramsey County Procurement Contract, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties.

All shipments, shipping papers, invoices and correspondence must be identified with our Contract ID Number. Price increases will not be honored. Errors: In case of error in calculating or typing, the quoted unit price will be used as basis for correction of this order. Freight: Unless otherwise specified herein, prices are F.O.B. destination, with freight prepaid and included. Tax: Unless otherwise specified herein, prices are inclusive of applicable taxes.

Unauthorized



1. Contracting for Equity

1.1. Commitment to Advancing Racial Equity

The county is committed to advancing racial equity for its residents. The commitment is captured in the county's Advancing Racial Equity policy which states that "Racial equity is achieved when race can no longer be used to predict life outcomes, and outcomes for all are improved."

Consistent with the Advancing Racial Equity policy, contractors will take all reasonable measures to advance racial equity during contract performance. Contractors will recognize and acknowledge this requires deconstructing barriers and changing systems, structures, policies and procedures. Contractors will be equitable, inclusive, transparent, respectful and impactful in serving and engaging residents. Contractors will have meaningful and authentic engagement with community and employees to strengthen the administration, development and implementation of policies and procedures to advance racial equity and ensure that all residents in need have awareness of and access to contracted services.

Please review Ramsey County's [Advancing Racial Equity policy](#) to learn more about Ramsey County's commitment to racial equity.

1.2. Non-Discrimination (In accordance with Minn. Stat. § 181.59)

Contractors will comply with the provisions of Minn. Stat. § 181.59 which require:

"Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the contractor agrees:

(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 state, county, city, town, school board, or any other person authorized to grant the contracts for employment, 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."

1.3. Equal Employment Opportunity and Civil Rights

1.3.1.

Contractors agree that no person shall, on the grounds of race, color, religion, age, sex, sexual orientation, disability, marital status, public assistance status, criminal record

(subject to the exceptions contained in Minn. Stat. §§299C.67 to 299C.71 and Minn. Stat. §144.057), creed or national origin, be excluded from full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity under the provisions of any and all applicable federal and state laws against discrimination, including the Civil Rights Act of 1964. Contractors will furnish all information and reports required by the county or by Executive Order No. 11246 as amended, and by the rules and regulations and orders of the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

1.3.2.

Contractors shall comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

1.3.3.

Contractors shall agree that no qualified individual with a disability as defined by the Americans with Disabilities Act, 42 U.S.C. §§12101-12213 or qualified handicapped person, as defined by United States Department of Health and Human Services regulations, Title 45 Part 84.3 (j) and (k) which implements Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, under Executive Order No. 11914 (41FR17871, April 28, 1976) shall be:

1.3.3.1.

Denied access to or opportunity to participate in or receive benefits from any service offered by contractors under the terms and provisions of this agreement; nor

1.3.3.2.

Subject to discrimination in employment under any program or activity related to the services provided by contractors.

1.3.3.3.

If it is discovered that a contractor is not in compliance with applicable regulations as warranted, or if the contractor engages in any discriminatory practices, as described above, then the county may cancel said agreement as provided by the cancellation clause of this agreement.

1.4. Utilization of Certified Vendors

The county has adopted the Principles for Inclusiveness in Contracting Program ("IICP") in order to increase the participation of small businesses ("SBEs") in the county's purchasing activities. The contracting inclusion goal for this Project is: 32%.

1.5. Diverse Workforce Initiative

The county has a goal of continuing to increase participation of qualified minorities and women in each county construction project. The county has established a goal of 20% women and 32% minority goal for site workforce utilization for the project.

1.6. Workforce and Contracting Inclusion Reporting

1.6.1. Contracting Inclusion

Contractors shall complete and submit Attachment B -- Contracting Inclusion Reporting Forms with monthly applications for payment or as otherwise directed by the county project manager.

The report shall specify the project and contract number and include:

Ownership: Including but not limited to CERT small business enterprises (SBEs), minority owned enterprises (SMBEs), women owned enterprises (SWBEs), minority women owned enterprises (SWMBEs) and veteran enterprises (SVBEs).

- a. All certifications of the prime contractor.
- b. Name of sub-contractor and all certifications of each sub-contractor along with amounts paid to each sub-contractor to date.

1.6.2. Workforce Inclusion

Contractor (and all appropriate subcontractors) shall utilize County's LCP Tracker software system for submission of completed certified payroll reports and the LCP Tracker workforce inclusion 'Goal Report' with monthly applications for payment or as otherwise directed by the county project manager. County shall provide LCP Tracker training to Contractor if requested.

1.7. Diverse Workforce Inclusion Resources

For information and assistance in increasing the participation of women and minorities, contractors are encouraged to access the websites below:

1. <http://www.ramseycounty.us/jobconnect>
2. <http://www.ramseycounty.us/constructionconnect>

Job Connect and the Construction Connect provide a recruiting source for employers and contractors to post job openings and source diverse candidates.

Ramsey County's Job Connect links job seekers, employers and workforce professionals together through our website, networking events and community outreach. The network includes over 10,000 subscribed job seekers ranging from entry-level to highly skilled and experienced professionals across a broad spectrum of industries.

Employers participate in the network by posting open jobs, meeting with workforce professionals and attending hiring events. Over 200 Twin Cities community agencies, all working with job seekers, participate in the network.

Ramsey County's Construction Connect is an online and in-person network dedicated to the construction industry. Construction Connect connects contractors and job seekers with employment opportunities, community resources and skills training related to the construction industry. Construction Connect is a tool for contractors to help meet diversity hiring goals. Additional assistance is available through askworkforcesolutions@ramseycounty.us or by calling 651-266-9890.

2. General Contract/Agreement Terms and Conditions

2.1.

The Contract resulting from this solicitation shall contain the following terms and conditions stated in this Section 2.

2.2. Definitions

AGREEMENT

The entire and integrated written document between the Owner and the Contractor concerning the Work. The Agreement contains all Contract Documents, as defined below, and supersedes prior representations, and agreements, whether written or oral, and sets forth the parties

obligations, including but not limited to, the performance of the Work, the furnishing of labor and materials, and all other requirements in the Contract Documents.

AGGREGATE

Natural materials such as sand, gravel, crushed rock, or taconite tailings, and crushed concrete or salvaged bituminous mixtures, usually with a specified particle size, for use in base course construction, paving mixtures, and other specified applications.

BID

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

BIDDER

The individual or entity who submits a Bid to Owner.

CALENDAR DAY

Every day shown on the calendar, being 24 hours in length measured from midnight to the next midnight.

CONTRACTOR

The selected Bidder, an individual, firm, or corporation, contracting for and undertaking the completion of the prescribed Work; acting directly or through a duly authorized representative.

CONTRACT DOCUMENTS

Includes the Request for Bids (RFB), addenda, contractor bid, response forms, bonds, general terms and conditions, specifications, supplemental specifications, special provisions, plans, detail plans, Notice to Proceed, supplemental plans, change orders, supplemental agreements, field orders and shop plans.

CONTRACT PRICE

The total monetary amount to be paid to the Contractor for completion of the work in accordance with the Contract Documents as stated in the Agreement, including any approved Change Orders that have increased or decreased the original total monetary amount to be paid the Contractor.

CONTRACT TIME

The Substantial Completion date or number of calendar days allowed for substantial completion of the Work, including approved time extensions.

DETOUR

A road or system of roads, usually existing, designated as a temporary route by the Owner's Representative or Contractor to divert through traffic from a section of roadway being improved.

EASEMENT

A right acquired to use or control property for a designated purpose.

FIELD ORDER

A written order effecting change in the work not involving an adjustment in the contract price or an extension of the contract time, issued by the Owner's Representative to the Contractor during construction.

GUARANTEED ANALYSIS

A guarantee from a manufacturer, producer or supplier of a product that the product complies with the ingredients or specifications as indicated on the product label.

HOLIDAYS

The days of each year set aside by legal authority for public commemoration of special events, and on which no public business shall be transacted except as specifically provided in cases of necessity. Unless otherwise noted, holidays shall be as established in Min. Stat. Section 645.44.

INDUSTRY STANDARD

An acknowledged and acceptable measure of quantitative or qualitative value or an established procedure to be followed for a given operation within the given industry. This will generally be in the form of a written code, standard or specification by a creditable association.

MATERIALS

Any substances specified for use in the construction of the Project and its appurtenances.

PAY, BID OR CONTRACT ITEM

A specifically described unit of work for which a price is provided for in the Agreement.

NOTICE TO PROCEED

A written notice given to the Contractor by the Owner or Owner's Representative to proceed with the Work including, stating when applicable the date of the beginning of the Contract Time and the days until Substantial Completion is required or stating the date upon which Substantial Completion is to be achieved.

OWNER

The Owner of the Project is Ramsey County, and the term "Owner" shall mean the County.

OWNERS REPRESENTATIVE

An architect, designer, engineer, construction manager, or other person designated by the Owner to act on the Owner's behalf.

PLAN(S)

The plans, profiles, typical cross sections, and supplemental plans that show the locations, character, dimensions, and details of the work to be completed.

PROJECT

The Work to be performed under the Contract Documents.

PUNCH LIST

A notification to the contractor, in writing, of any particulars in which an inspection revealed that the Work is defective or incomplete.

SHOP DRAWINGS

All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the Contractor, a subcontractor, manufacturer, supplier or distributor, which illustrate how specific portions of the Work shall be fabricated or installed.

SPECIFICATIONS

All directions, provisions, and requirements defining the materials and performance of the Work.

SUBCONTRACTOR

The subcontractor is an individual, firm or corporation acting for or on behalf of the Contractor in performing any part of the Work. The subcontractor has a direct contract with the Contractor or another subcontractor and not the Owner.

SUBSTANTIAL COMPLETION

That date as certified by the Owner's Representative when the construction of the Project or a specified part thereof is sufficiently completed, in accordance with the Agreement, so that the Project or specified part can be utilized for the purposes for which it is intended.

SUPPLEMENTAL AGREEMENT

A written agreement between the Owner and the Contractor, covering the performance of extra work or other alterations or adjustments to the Work or any of the Contract Documents as provided for within the general scope of the Agreement, but which extra work or Change Order constitutes a modification of the Agreement as originally executed and approved.

SUPPLIERS

Any person, supplier or organization who supplies materials or equipment for the Work, including those fabricated to a special design, but who does not perform labor at the Project site.

WORK

The furnishing of all labor, materials, equipment, and other incidentals necessary or convenient to the successful completion of the Project and the carrying out of the duties and obligations of the Contractor under the Contract Documents.

2.3. Order of Governance

2.3.1.

The Contract Documents comprise the entire agreement between the County and the Contractor and supersede prior representations, understandings or agreements, whether written or oral. The Contract Documents shall be construed in accordance with Minnesota law and shall be deemed to incorporate Laws and Regulations whether in force before or after submission of Bids, with which the Contractor is required to comply. It is the intent of the Contract Documents to describe a functionally complete Project (or portion thereof) to be constructed in accordance with the Contract Documents. Any Work, materials, or equipment, whether or not specifically called for, that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be furnished and performed by the Contractor without change in the Contract Price or Contract Time.

2.3.2.

To resolve conflicts between various portions of the Contract Documents that may arise, priority and order of precedence shall be given to the Contract Documents as follows:

1. Change Order,
2. Field Order,
3. Other Supplemental Agreement,
4. Supplemental Specification,
5. Supplemental Plan,
6. Project Manual,
7. Specifications,
8. Plans,
9. General Contract/Agreement Terms and Conditions,
10. Ramsey County Procurement Contract
11. Addenda to the RFB,
12. Request for Bids (RFB)

2.3.3.

If discrepancies exist between dimensions in the Contract documents, the following order of precedence applies:

1. Plan dimensions,
2. Calculated dimensions,
3. Scaled dimensions.

The Owner and the Contractor shall inform each other as to any discrepancy or defect they discover in the Contract Documents. Neither the Contractor nor the Owner shall take advantage of any discrepancy or defect in the Contract Documents. The Owner will review the identified discrepancy or defect to determine if a revision to the Contract Documents is necessary. The Owner will decide all issues concerning a discrepancy or defect.

2.4. Payment

2.4.1.

If this is a lump sum contract for supplies, equipment, materials and labor, or construction, invoices shall include any applicable State or Federal sales, excise or other tax. Do not itemize tax separately.

2.4.2.

If this is a contract for supplies, equipment or materials purchased for a golf course or solid waste hauling and recycling, the contractor shall itemize any applicable State or Federal sales, excise or other tax separately on the invoice.

2.4.3.

Each invoice must include a progress report on achievement of project SBE and Workforce goals. No payment will be made until the invoice and progress report have been approved by the County.

2.4.4.

Payments shall be made when the materials/services have been received in accordance with the provisions of the resulting contract.

2.5. Application for Payments

2.5.1.

The Contractor shall submit an invoice as mutually agreed upon by Contractor and the County.

2.5.2.

Invoices for any goods or services not identified in this Agreement will be disallowed.

2.5.3. Surety Deposit Requirement for Non-Minnesota Construction Contractors

For **any one contract** where the anticipated contract value of the construction portion of the contract exceeds \$50,000, the department must withhold 8 percent from payments and send the money to the Minnesota Department of Revenue. The department will hold the funds as surety for the payment of state taxes owed as a result of the contract. For more information about this law, including exceptions to the withholding requirement, visit the [MN Department of Revenue](#) or [Withholding Tax Fact Sheet 12 -- Surety Deposits for Non-Minnesota Construction Contractors](#).

2.5.4.

Each application for payment shall contain the order/contract number, an itemized list of goods or services furnished and dates of services provided, cost per item or service, and total invoice amount. Payment for Materials stored will be conditioned on the following: The Contractor shall submit evidence to establish the Owner's title to such materials; acceptable provisions have been made for storage; the Contractor is responsible for all loss, theft, vandalism, storage and similar peril for the full value of the stored Material.

2.5.5.

Payment shall be made within thirty-five (35) calendar days after the date of receipt of a detailed invoice and verification of the charges. At no time will cumulative payments to the Contractor exceed the percentage of project completion, as determined by the County.

2.5.6.

Payment of interest and disputes regarding payment shall be governed by the provisions of Minnesota Statutes §471.425.

2.5.7.

The Contractor shall pay any subcontractor within ten days of the Contractor's receipt of payment from the County for undisputed services provided by the subcontractor. The Contractor shall 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 \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, the Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from the Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

2.5.8.

The Contractor shall pay the applicable prevailing wage rates at the time, during which, the work is being performed. Statement of Compliance for Ramsey County Contractors and Ramsey County Prevailing Wage Biweekly Payroll Report shall be completed and submitted per Ramsey County Prevailing Wage Ordinance No. 2013-329. See also Section 3.42.

2.5.9.

Payment for Materials stored will be conditioned on the following: The Contractor shall submit evidence to establish the Owner's title to such materials; acceptable provisions have been made for storage; the Contractor is responsible for all loss, theft, vandalism, storage and similar peril for the full value of the stored Material.

2.5.10.

The County and the Contractor must comply with Minn. Stat. § 15.72, Progress Payments on Public Contracts; Retainage. The County will reserve and release retainage in accordance with Minn. Stat. § 15.72, subd. 2. The County will reserve retainage of five percent from each progress payment on a public improvement contract. Consistent with Minn. Stat. §15.72, the Contractor shall pay all remaining retainage to its subcontractors no later than ten days after receiving payment of retainage from the County, unless there is a dispute about the work under a subcontract. If there is a dispute about the work under a subcontract, the Contractor must pay out retainage to any subcontractor whose work is not involved in the dispute, and must provide a written statement detailing the amount and reason for the withholding to the affected subcontractor.

2.5.11.

When any of the above grounds for which payment is being withheld is removed, payment shall be made for the amount withheld.

2.5.12.

At the time of Project close out, the Contractor shall submit the following listed items and the final payment and the remaining retained percentage shall become due until the Contractor submits to the Owner each of the following:

1. Contractor IC-134;
2. Subcontractor(s) IC-134;
3. An affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or its property might in any way be responsible, have been paid or otherwise satisfied (the form of affidavit for use by the Contractor and all Subcontractors will be provided by the Owner to the Contractor prior to Project close-out);
4. Consent of surety, if any, to final payment;
5. Submission of two copies of operation and maintenance manuals with provided warranty documentation for products;
6. Two copies of as-built plans identifying modifications to original plans;
7. If required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising from the Agreement, to the extent and in such form as may be designated by the Owner;
8. Temporary Certificate of Occupancy, if applicable;
9. Final Certificate of Occupancy;
10. Substantial completion on Certificate (signed by the Architect/Engineer and the Contractor);
11. Completed punch list signed by the Contractor;
12. Storm water NPDES Notice of Termination (if applicable);
13. All Prevailing Wage Reports through the completion of the Work;
14. Final SBE report;
15. Final Diverse workforce report;
16. Copies of Project records and evidence that all required operation and maintenance training has been completed and all required training manuals, videos and similar or related documents. If any Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify it against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

Before final payment is made, the Contractor shall also make a satisfactory showing that it has complied with the provisions of Minn. Stat. § 290.92 requiring the withholding of state income tax from wages paid to the Contractor's employees for Work performed under the Agreement. Receipt by the Owner of a certificate of compliance from the Commissioner of Revenue will satisfy this requirement.

The Contractor has been advised that before the certificate can be issued Contractor must first place on file with the Commissioner of Revenue, an affidavit stating that Contractor has complied with the provisions of Minn. Stat. § 290.92. Unless the Contractor has presented an affidavit to the Owner's Representative showing that all claims against Contractor by reason of the Agreement have either been paid or satisfactorily secured, final payment may be withheld or a sufficient amount may be retained there from to cover the unpaid and potential claims.

2.6. Payment for Uncorrected Work

If the Owner directs the Contractor not to correct Work that has been damaged or that has not been performed in accordance with the Contract Documents, an equitable deduction from the Contract Price shall be made by means of a change order to compensate the Owner for the uncorrected Work.

2.7. Payment for Rejected Work and Materials

The removal of Work and Materials rejected and the re-execution of acceptable Work by the Contractor shall be at the expense of the Contractor, and they shall pay the cost of replacing the Work of other contractors destroyed or damaged by the removal of the rejected Work or Materials and the subsequent replacement of acceptable Work.

2.8. Payment for Extra Work

Written notice of claims for payments for extra Work ("Extra Work") shall be given by the Contractor within three (3) days after receipt of a Field Order from the Owner's Representative to proceed with the Extra Work and the written notice shall be made before any Extra Work is commenced by the Contractor, except in emergency situations endangering life or property. No claim for payment for the Extra Work shall be valid unless the written claim is made in the manner required by this Section. The Contractor shall submit to the Owner itemized estimate sheets showing all labor and material and items of cost of the Extra Work. If the Owner approves proceeding, a Change Order for the Extra Work shall be issued specifying an extension of the Contract Time, if any, and one of the following methods of payments: unit prices or combinations of unit prices which formed the basis of the original Contract; a lump sum based on the Contractor's estimate, approved by the Owner's Representative and accepted by the Owner; or actual cost plus overhead and profit for force account work.

2.9. Payment for Samples, Testing of Materials, and Compaction Testing

2.9.1.

Unless stated otherwise in the Contract Documents, testing of samples and Materials furnished shall be arranged and paid for by the Owner, unless the tests fail, in which case they shall be paid for by the Contractor. Compaction testing will be conducted and paid for by the Owner, unless the tests fail, in which case the Contractor shall pay for them.

2.9.2.

The Contractor shall submit samples for review of kind, color, pattern, and texture for a check of these characteristics with other elements and for a comparison of these characteristics between submittal and the actual component as delivered and installed. The Contractor shall transmit samples that contain multiple, related components such as accessories together in one submittal package. The Contractor shall maintain sets of approved samples at Project site, available for quality-control comparisons throughout the course of construction activity. Sample sets may be used to determine final acceptance of construction associated with each set. The Contractor shall submit manufacturer's color charts consisting of units or sections of units showing the full range of colors, textures, and patterns available. The Contractor shall submit one full set(s) of available choices where color, pattern, texture, or similar characteristics are required to be selected from manufacturer's product line. The Owner's Representative shall return the submittal with options selected.

2.10. Release of Liens

If required by the Owner, the Contractor shall submit other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens arising from the Contract, to the extent and in such form as may be designated by the Owner. If any Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may

furnish a bond satisfactory to the Owner to indemnify it against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

2.11. Materials Furnished by the Contractor

2.11.1.

All Materials used in the Work shall be new unless otherwise provided for in the Contract Documents, shall meet the requirements of the specification be in conformance with samples provided, and shall not be incorporated into the Work until reviewed by the Owner's Representative.

2.11.2.

Unless otherwise specifically indicated in the Contract Documents, all Materials necessary for the proper execution of the work shall be furnished and paid for by the Contractor, whether temporary or not and whether incorporated into the Work or not.

2.11.3.

Manufactured articles, Materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditions as specified by the manufacturer.

2.11.4.

Materials, supplied or equipment to be incorporated into the Work shall not be purchased by the Contractor or the subcontractor subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

2.11.5.

The Owner may at its option pay for Materials that are purchased and stored offsite by the Contractor prior to their incorporation into the work.

2.12. Materials Furnished by Owner

Materials specifically indicated shall be furnished by the Owner. Before incorporating any of the Materials into the Work, the Contractor shall inspect the Materials so furnished by the Owner. If the Contractor discovers any latent defects in Material furnished by the Owner, they shall notify the Owner's Representative.

2.13. Storage of Materials

Materials shall be so stored by the Contractor as to insure the preservation of their quality and fitness for the Work. Stored Materials shall be located so as to facilitate prompt inspection. Private property shall not be used for storage purposes without the written permission of the owner or lessee thereof.

2.14. Independent Contractor

The Contractor is and shall remain an independent contractor throughout the term of this Agreement and nothing herein is intended to create, or shall be construed as creating, the relationship of partners or joint ventures between the parties or as constituting the Contractor as an employee of the County.

2.15. Successors, Subcontracting and Assignment

2.15.1.

The Contractor binds itself, its partners, successors, assigns and legal representatives to the County in respect to all covenants and obligations contained in this Agreement.

2.15.2.

After award, the Contractor shall not assign or transfer any interest in this Agreement without the prior written approval of the Owner and subject to such conditions and provisions as the County may deem necessary. The Contractor shall be responsible for the performance of all Subcontractors.

2.15.3.

The Contractor may utilize the services of specialty Subcontractors on those parts of the Work, which, under normal contracting practices, are performed, by specialty Subcontractors.

2.15.4.

If while completing the Project, additional Subcontractors are required, the Contractor shall notify the Owner in writing of the Subcontractor's name, contact information and the specific Work to be performed prior to the start of the work to be completed by the Subcontractor.

2.15.5.

The Contractor is responsible to the Owner for the acts and omissions of Contractor's Subcontractors, and of their direct and indirect employees, to the same extent as the Contractor is responsible for the acts and omissions of Contractor's employees.

2.15.6.

The Contract Documents shall not be construed as creating any contractual relations between the Owner or the Owner's Representative and any Subcontractor.

2.15.7.

The Contractor agrees to bind every Subcontractor and every Subcontractor agrees to be bound by the terms of the Contract Documents as far as applicable to the Subcontractor's Work.

2.15.8.

For convenience of reference and to facilitate the letting of contracts and subcontracts, the specifications are separated into titled sections. Such separations shall not, however, operate to make the Owner or Owner's Representative an arbitrator to establish limits to the contracts between the Contractor and Subcontractors.

2.15.9.

The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the work of Subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the Contract Documents.

2.16. Compliance With Legal Requirements

2.16.1.

The Contractor shall comply with all applicable federal, state and local laws and the rules and regulations of any regulatory body having jurisdiction with respect to the Work of the Contractor and all licenses, certifications and other requirements necessary for the execution and completion of the contract.

2.16.2.

Unless otherwise provided in the Agreement, the Contractor, at its own expense, shall secure and pay for all permits, fees, charges, duties, licenses, certifications, inspections, and other requirements and approvals necessary for the execution and completion of the Work.

2.16.3.

If the Contractor observes that the specifications or drawings are at variance with any laws, ordinances, rules and regulations applicable to the Work, the Contractor shall give the Owner's Representative prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate modification. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without prior written notice to Owner's Representative and the Owner's Representatives approval to proceed, the Contractor shall bear all costs arising therefrom; however, it shall not be the Contractor's primary responsibility to make certain that the Specifications and drawings are in accordance with such laws, ordinances, rules and regulations.

2.16.4.

The Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the Work and other persons who may be affected thereby, all the Work and Materials or equipment to be incorporated therein, whether in storage on or off the site and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

2.16.5.

The Contractor will erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection. The Contractor will notify the Owner of adjacent utilities when prosecution of the Work may affect them. The Contractor will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts either of them may liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the Contractor.

2.16.6.

The Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and Owner's Representative has issued a notice to Owner and Contractor that the Work is acceptable.

2.16.7.

The Contractor shall designate a responsible member of their organization at the site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by the Contractor to the Owner.

The Contractor shall at all times keep the chief of police, the fire chief, the city, county, state, and the Owner's Representative, informed of current traffic detours and patterns. If, at any time, the Contractor fails to adequately maintain any of the traffic control devices, the Owner's Representative may order the Contractor to install the devices, or have the County install, replace or maintain the devices and deduct the costs thereof from any monies due the Contractor. No direct compensation will be made for any flagmen required on the project under this Agreement. All necessary signing and barricading for lane closures and street closing shall be done in conformance with the "Minnesota Manual on Uniform Traffic Control Devices" and shall be the responsibility of the Contractor.

2.16.8.

In emergencies affecting the safety of persons or the Work or property at the site of the project or adjacent thereto, the Contractor, without special instruction or authorizations from the Owner's Representative or the Owner, shall act to prevent threatened damage, injury or loss. The Contractor shall give the Owner's Representative prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby, and a Change Order shall there upon be issued covering the changes and deviations involved.

2.17. Permitting

Except for permits or fees specifically identified in the Contract Documents as responsibility of the Owner to pay, the Contractor shall secure and pay for necessary permits, approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures and for permanent changes in existing facilities. The Owner does not have information about nor is it in control of possible requirements which may be deemed necessary by permitting authorities in order for the Contractor to perform the Work. The Contractor shall plan and coordinate Work approach details with permitting officials to achieve any condition deemed necessary by the permitting authority. Additions to or changes in the Contractor's anticipated approach to the Work as the result of requirements specified by the permit authority are incidental and will not result in added cost to the Owner.

2.18. Data Practices

2.18.1.

All data collected, created, received, maintained or disseminated for any purpose in the course of the Contractor's performance under this Agreement is subject to the provisions of the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, any other applicable state statutes, any state rules adopted to implement the Act and statutes, as well as federal statutes and regulations on data privacy.

2.18.2.

The Contractor designates Eugene Berwald as its Responsible Designee, pursuant to the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13.02 Subdivision 6, as the individual responsible for any set of data collected to be maintained by Contractor in the execution of this Agreement.

2.18.3.

The Contractor shall take all reasonable measures to secure the computers or any other storage devices in which County data is contained or which are used to access County data in the course of providing services under this Agreement. Access to County data shall be limited to those persons with a need to know for the provision of services by the Contractor. Except where client services or construction are provided, at the end of the Project all County data will be purged from the Contractor's computers and storage

devices used for the Project and the Contractor shall give the County written verification that the data has been purged.

2.19. Security

2.19.1.

The Contractor is required to comply with all applicable Ramsey County Information Services Security Policies ("Policies"), as published by Information Services Information Security. The Policies are posted at <https://www.ramseycounty.us/businesses/doing-business-ramsey-county/contracts-vendors/information-security-policies-vendors>.

2.19.2.

Contractors shall report to Ramsey County any privacy or security incident regarding the information of which it becomes aware. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with System operations in an information system. "Privacy incident" means violation of the Minnesota Government Data Practices Act (MGDPA) and/or the HIPAA Privacy Rule (45 C.F.R. Part 164, Subpart E), including, but not limited to, improper and/or unauthorized use or disclosure of protected information, and incidents in which the confidentiality of the information maintained by it has been breached. This report must be in writing and sent to the County not more than 7 days after learning of such non-permitted use or disclosure. Such a report will at least: (1) Identify the nature of the non-permitted use or disclosure; (2) Identify the data used or disclosed; (3) Identify who made the non-permitted use or disclosure and who received the non-permitted or violating disclosure; (4) Identify what corrective action was taken or will be taken to prevent further non-permitted uses or disclosures; (5) Identify what was done or will be done to mitigate any deleterious effect of the non-permitted use or disclosure; and (6) Provide such other information, including any written documentation, as the County may reasonably request. The Contractor is responsible for notifying all affected individuals whose sensitive data may have been compromised as a result of the Security or Privacy incident.

2.19.3.

Contractors must ensure that any agents (including contractors and subcontractors), analysts, and others to whom it provides protected information, agree in writing to be bound by the same restrictions and conditions that apply to it with respect to such information.

2.19.4.

The County retains the right to inspect and review the Contractor's operations for potential risks to County operations or data. The review may include a review of the physical site, technical vulnerabilities testing, and an inspection of documentation such as security test results, IT audits, and disaster recovery plans.

2.19.5.

All County data and intellectual property stored in the Contractor's system is the exclusive property of the County.

2.20. Indemnification

The Contractor shall indemnify, hold harmless and defend the County, its officials, agents, and employees against any and all liability, losses, costs, damages, expenses, claims or actions, including reasonable attorney's fees, which the County, its officials, agents, or employees may hereafter sustain, incur or be required to pay, arising out of or by reason of any act or omission of the Contractor, or its subcontractors, and their officers, agents or employees, in the execution,

performance, or failure to adequately perform the Contractor's obligations pursuant to this Agreement.

2.21. Contractor's Insurance

2.21.1.

The Contractor shall purchase and maintain such insurance as will protect the Contractor from claims which may arise out of, or result from, the Contractor's operations under this Agreement, whether such operations are by the Contractor or by any subcontractor, or by anyone directly employed by them, or by anyone for whose acts or omissions anyone of them may be liable.

2.21.2.

Throughout the term of this Agreement, the Contractor shall secure the following coverages and comply with all provisions noted. Certificates of Insurance shall be issued to the County contracting department evidencing such coverage to the County throughout the term of this Agreement.

2.21.3.

Commercial general liability of no less than \$1,000,000 per claim, \$5,000,000 per occurrence, \$5,000,000 general aggregate, \$5,000,000 products/completed operations total limit, \$5,000,000 personal injury and advertising liability.

2.21.3.1.

All policies shall be written on an occurrence basis using ISO form CG 00 01 or its equivalent. Coverage shall include contractual liability and XCU. Contractor will be required to provide proof of completed operations coverage for 3 years after substantial completion.

2.21.4. Workers' Compensation

Contractor certifies it is in compliance with Minnesota Statutes Ch. 176 (Workers' Compensation). The Contractor's employees, subcontractors and agents will not be considered County employees. Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota.

Required minimum limits of \$500,000/\$500,000/\$500,000. Any claims that may arise under Minnesota Statutes Ch. 176 on behalf of these employees, subcontractors or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees, subcontractors or agents are in no way the County's obligation or responsibility.

If Minnesota Statute 176.041 exempts Contractor from Workers' Compensation insurance or if the Contractor has no employees in the State of Minnesota, Contractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Contractor from the Minnesota Workers' Compensation requirements. If during the course of the contract the Contractor becomes eligible for Workers' Compensation, the Contractor must comply with the Workers' Compensation Insurance requirements herein and provide the County with a certificate of insurance.

2.21.5.

An umbrella or excess liability policy over primary liability insurance coverages is an acceptable method to provide the required commercial general liability and employer's

liability insurance amounts. If provided to meet coverage requirements, the umbrella or excess liability policy must follow form of underlying coverages and be so noted on the required Certificate(s) of Insurance.

2.21.6.

The Contractor is required to add Ramsey County, its officials, employees, volunteers and agents as Additional Insured to the Contractor's Commercial General Liability, Auto Liability, Pollution and Umbrella policies with respect to liabilities caused in whole or part by Contractor's acts or omissions, or the acts or omissions of those acting on Contractor's behalf in the performance of the ongoing operations, services and completed operations of the Contractor under this Agreement. The coverage shall be primary and non-contributory.

2.21.7.

If the contractor is driving on behalf of the County but not transporting clients as part of the contractor's services under this contract, a minimum of \$500,000 combined single limit auto liability, including hired, owned and non-owned.

2.21.8.

Whenever work at issue under Contract involve potential pollution risk to the environment or losses caused by pollution conditions, including asbestos, that may arise from the operations of the Contractor or Contractor's subcontractors, Contractor shall include completed operations coverage for 3 years after substantial completion. Coverage shall apply to sudden and gradual pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemical, liquids, or gases, natural gas, waste materials, or other irritants, contaminants or pollutants, including asbestos.

2.21.9.

The Contractor waives all rights against Ramsey County, its officials, employees, volunteers or agents for recovery of damages to the extent these damages are covered by the general liability, worker's compensation, and employers liability, automobile liability, professional liability and umbrella liability insurance required of the Contractor under this Agreement.

2.21.10. Railroad Protective

Where the contract requires work to be performed within 50 feet of the right-of-way of a railroad, the Contractor shall provide such insurance as the railroad company may require. The cost for such insurance shall be included in the construction budget as an allowance and itemized separately without any mark up.

2.21.11.

These are minimum insurance requirements. It is the sole responsibility of the Contractor to determine the need for and to procure additional insurance which may be needed in connection with this Agreement. Copies of policies and/or certificates of insurance shall be submitted to the County upon written request and within 10 business days.

2.21.12.

Certificates shall specifically indicate if the policy is written with an admitted or non-admitted carrier. Best's Rating for the insurer shall be noted on the Certificate, and shall not be less than an A-.

2.21.13.

The Contractor shall not commence work until it has obtained the required insurance and if required by this Agreement, provided an acceptable Certificate of Insurance to the County.

2.21.14.

All Certificates of Insurance shall provide that the insurer give the County prior written notice of cancellation or non-renewal of the policy as required by the policy provisions of Minn. Stat. Ch. 60A, as applicable. Further, all Certificates of Insurance to evidence that insurer will provide at least ten (10) days written notice to County for cancellation due to non-payment of premium.

2.21.15. Property Insurance

2.21.15.1.

The County shall purchase and maintain, in a company or companies authorized to do business in the jurisdiction in which the Project is located, property insurance upon the Work to the fullest insurable value thereof on a replacement cost basis, subject to a deductible of \$100,000. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the County has an insurable interest in the property required by this Section 2) to be insured, whichever is earlier. This insurance shall include interests of the County, the Contractor, and their respective contractors and subcontractors in the Work. The Contractor shall be responsible for the deductible under this policy, and all other costs not covered by property insurance up to the date of Substantial Completion, and all such costs shall be considered as a Cost of the Work.

2.21.15.2.

Property insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, falsework, rigging & hoisting, terrorism, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the services and expenses of the Contractor's Architect and other professionals required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in the Contract Documents.

2.21.15.3.

Unless otherwise provided, the County shall purchase and maintain such boiler and machinery insurance required by this Agreement or by law, which shall specifically cover such insured objects during installation and until final acceptance by the County. This insurance shall include interests of the County, the Contractor, the Contractor's contractors and subcontractors in the Work, and the Contractor's Architect and other design professionals. The County and the Contractor shall be named insureds.

2.21.15.4.

A loss insured under the County's property insurance shall be adjusted by the County as fiduciary and made payable to the County as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable

mortgagee clause and of Section 2.6). The Contractor shall pay contractors their shares of insurance proceeds received by the Contractor, and by appropriate agreement, written where legally required for validity, shall require contractors to make payment to their subcontractors in similar manner.

2.21.15.5.

Before an exposure to loss may occur, the County shall file with the Contractor a copy of a Certificate of Insurance for each policy that includes insurance coverages required by this Section 2). Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least thirty (30) business days' prior written notice has been given to the Contractor.

2.21.15.6.

The County as trustee shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing, within five (5) business days after such notification of the County's intent to exercise this power; if such objection be made, the parties shall enter into dispute resolution under procedures provided in this Agreement. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

2.21.15.7.

Partial occupancy or use prior to Substantial Completion shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The County and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall not, without mutual written consent, take any action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of coverage.

2.21.16. Waiver of Subrogation

The Contractor waives all rights against the County and the Architect and other design professionals, contractors, subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extent covered by property or builders risk insurance applicable to the Work, except to such rights as they may have to proceeds of such insurance held by the Trustee. The Owner or Contractor as appropriate, shall require from contractors and subcontractors by appropriate agreements, written where legally required for validity, similar waivers each in favor of the parties enumerated in this Section. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly and whether or not the person or entity had an insurable interest in the property damaged.

2.21.17.

The County shall be responsible for purchasing and maintaining the County's usual liability insurance and/or self-insurance program.

2.21.18.

Nothing in this Agreement shall constitute a waiver by the County of any statutory or common law immunities, defenses, limits, or exceptions on liability.

2.22. Omission of Express Reference

Any Work that may reasonably be inferred from the Contract Documents, as being required to produce the intended result shall be supplied whether or not it is specifically called for. Work, Materials, or equipment described in words that so applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.

2.23. Notice to Proceed

The date of commencement of the Work is the date set forth in the Notice to Proceed. If there is no Notice to Proceed, commencement shall be the effective date of the Agreement or such other date as may be established in the Agreement as the date the Work shall commence. Thereupon, the Contractor shall begin and shall prosecute the Work regularly and without interruption, unless otherwise directed in writing by the Owner, with such manpower and equipment as is necessary to complete the Work within the time stated in the Contract Documents.

2.24. Pre-Construction Conference

2.24.1.

Prior to the start of the Work, there will be a pre-construction conference arranged by the Owner's Representative. Representatives of effected government agencies, the Owner, the Contractor (including the project superintendent), the Contractor's Subcontractors, and utility companies shall be present at this meeting.

2.24.2.

At this meeting, the Contractor shall designate a competent Project superintendent. The Contractor shall also submit a list of phone numbers for the various Subcontractors, foremen and superintendents, including numbers to use in case of emergency.

2.24.3.

Also at this meeting, the Contractor shall submit in writing to the Owner's Representative for approval, a schedule of procedure indicating the order in which the Contractor proposes to perform the various stages of the Work, the dates on which the Contractor will start the several salient features thereof (including procurement of Materials and equipment), and the contemplated dates for completing the same. This schedule shall be in the form of a bar chart of a suitable scale to indicate appropriately the percentage of Work scheduled and completed at weekly intervals. The Contractor shall not deviate from the schedule after once approved without the written permission of the Owner's Representative. The Contractor shall also submit a schedule of payments that the Contractor anticipates it will earn during the course of the Work, based on the schedule.

2.25. Audit

Until the expiration of six years after the furnishing of services pursuant to this Agreement, the Contractor, upon request, shall make available to the County, the State Auditor, or the County's ultimate funding source, a copy of the Agreement, and the books, documents, records, and accounting procedures and practices of the Contractor relating to this Agreement.

2.26. Notices

All notices under this Agreement, and any amendments to this Agreement, shall be in writing and shall be deemed given when delivered by certified mail, return receipt requested, postage prepaid, when delivered via personal service or when received if sent by overnight courier. All notices shall be directed to the Parties at the respective addresses set forth below. If the name and/or address of the representatives changes, notice of such change shall be given to the other Party in accordance with the provisions of this section.

County:

Nick Fahey, Property Management, 121 7th Place East, Suite 2000, Saint Paul, MN 55101

Contractor:

Eugene Berwald, Berwald Roofing Company Inc, 2440 North Charles Street, North Saint Paul,

2.27. Non-Conforming Services

The acceptance by the County of any non-conforming goods/services under the terms of this Agreement or the foregoing by the County of any of the rights or remedies arising under the terms of this Agreement shall not constitute a waiver of the County's right to conforming services or any rights and/or remedies in respect to any subsequent breach or default of the terms of this Agreement. The rights and remedies of the County provided or referred to under the terms of this Agreement are cumulative and not mutually exclusive.

2.28. Setoff

Notwithstanding any provision of this Agreement to the contrary, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the contract by the Contractor. The County may withhold any payment to the Contractor for the purpose of setoff until such time as the exact amount of damages due the County from the Contractor is determined.

2.29. Conflict of Interest

The Contractor shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Agreement. The Contractor warrants that it is not now aware of any facts that create a conflict of interest. If the Contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to the County. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this subparagraph shall be deemed a material breach of this Agreement.

2.30. Respectful Workplace and Violence Prevention

The Contractor shall make all reasonable efforts to ensure that the Contractor's employees, officers, agents, and subcontractors do not engage in violence while performing under this Agreement. Violence, as defined by the Ramsey County Respectful Workplace and Violence Prevention Policy, is defined as words and actions that hurt or attempt to threaten or hurt people; it is any action involving the use of physical force, harassment, intimidation, disrespect, or misuse of power and authority, where the impact is to cause pain, fear or injury.

2.31. Force Majeure

Neither party shall be liable for any loss or damage incurred by the other party as a result of events outside the control of the party ("Force Majeure Events") including, but not limited to: war, storms, flooding, fires, strikes, legal acts of public authorities, or acts of government in time of war or national emergency.

2.32. Unavailability of Funding - Termination

The purchase of goods and/or labor services or professional and client services from the Contractor under this Agreement is subject to the availability and provision of funding from the United States, the State of Minnesota, or other funding sources, and the appropriation of funds by the Board of County Commissioners. The County may immediately terminate this Agreement if the funding for the purchase is no longer available or is not appropriated by the Board of County Commissioners. Upon receipt of the County's notice of termination of this Agreement the Contractor shall take all actions necessary to discontinue further commitments of funds to this Agreement. Termination shall be treated as termination without cause and will not result in any penalty or expense to the County.

2.33. Termination by the County

2.33.1.

The County may immediately terminate this Agreement if any proceeding or other action is filed by or against the Contractor seeking reorganization, liquidation, dissolution, or insolvency of the Contractor under any law relating to bankruptcy, insolvency or relief of debtors. The Contractor shall notify the County upon the commencement of such proceedings or other action.

2.33.2.

The County may terminate this Agreement if the Contractor violates any material term or condition of this Agreement or does not fulfill in a timely and proper manner its obligations under this Agreement. In the event that the County exercises its right of termination under this Paragraph, it shall submit written notice to the Contractor and its surety, if any, specifying the reasons therefore. Termination shall be immediately effective upon the failure of the Contractor to cure the default within ten (10) business days of receipt of the notice of default. Upon termination, the Contractor shall take all actions necessary to discontinue further commitments of funds, and the County shall take possession of the site and of all materials and finish the construction by whatever method the County may deem expedient.

2.33.3.

The County may terminate this Agreement without cause upon giving at least thirty (30) calendar days written notice thereof to the Contractor. In such event, the Contractor shall be entitled to receive compensation for services provided in accordance with this Agreement up to and including the effective date of termination.

2.33.4.

This Agreement may be terminated by the County upon immediate written notice to the Contractor in the event that the Project is abandoned. If such termination occurs, the County shall pay the Contractor for services completed and for proven loss sustained upon materials, equipment, tools, construction equipment and machinery.

2.33.5.

Any termination by the County shall be without prejudice to the rights of the County to pursue other remedies against the Contractor.

2.34. Interpretation of Agreement; Venue

2.34.1.

The Agreement shall be interpreted and construed according to the laws of the State of Minnesota. All litigation regarding this Agreement shall be venued in the appropriate State or Federal District Court in Ramsey County, Minnesota.

2.34.2.

The provisions of this Agreement are severable. If any part of this Agreement is rendered void, invalid or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement.

2.35. Protection of Persons and Property

2.35.1.

The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to, County employees and other persons who may be affected; the Contractor's work and materials and equipment which are under the care, custody and control of the Contractor or any of the Contractor's subcontractors; and other property at the project site or adjacent thereto.

2.35.2.

Unless otherwise directed by the County's Authorized Representative, the Contractor shall promptly remedy damage or loss to property caused in whole or in part by the Contractor, its employees, officers, or subcontractor(s), or anyone directly employed by any of them, or by anyone for whose acts any of them may be liable.

2.36. Warranty

2.36.1.

The Contractor warrants that it has the legal right to provide the goods and services identified in this Agreement and further warrants that the goods and services provided shall be in compliance with the provisions of this Agreement.

2.36.2.

The Contractor shall expressly warrant and guarantee the workmanship, equipment and materials furnished to be in compliance with the terms of the Contract Documents. The warranty shall extend for a one (1) year period from and after the date of Substantial Completion. If any of the Work is found to be defective or not in accordance with the Contract Documents, Contractor shall correct the said condition promptly after receipt of written notice from the Owner. This includes the repairs of any damage to other parts of the property or Project resulting from such defects. Prior to commencement of the corrective Work, the Contractor shall provide insurance certificate policies, so as to protect the Owner, its Owner's Representative and their agents during the performance of the warranty Work. Acceptance by the Owner for the purpose of beginning the warranty period will be deemed to be when the Work is finally accepted by the Owner.

2.36.3.

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

2.36.4.

In the event that the Contractor should fail to make the repairs, adjustments or other Work that may be made necessary by defects in any of the Work, the Owner may do so and charge the Contractor the cost thereby incurred. The performance bond shall remain in full force and effect through the warranty/guaranty period. The Contractor's performance and payment bond delivered to the Owner pursuant to the Contract shall cover the Contractor's obligations provided for herein.

2.36.5.

Specific products used in the construction of the Work may include warranties specific to them and of a longer term than one (1) year. The Contractor shall provide written verification from the manufacturer of the product stating what the warranty covers and the time frame in which the warranty expires.

2.37. Infringement

2.37.1.

Complementary to other "hold harmless" provisions included in this Agreement, the Contractor shall, without cost to the County, defend, indemnify, and hold the County, its officials, officers, and employees harmless against any and all claims, suits, liability, losses, judgments, and other expenses arising out of or related to any claim that the County's use or possession of the software, licenses, materials, reports, documents, data, or documentation obtained under the terms of this Agreement, violates or infringes upon any patents, copyrights, trademarks, trade secrets, or other proprietary rights or information, provided that the Contractor is promptly notified in writing of such claim. The Contractor will have the right to control the defense of any such claim, lawsuit, or other proceeding. The County will in no instance settle any such claim, lawsuit, or proceeding without the Contractor's prior written approval.

2.37.2.

If, as a result of any claim of infringement of rights, the Contractor or County is enjoined from using, marketing, or supporting any product or service provided under the agreement with the County (or if the Contractor comes to believe such enjoinderment imminent), the Contractor shall either arrange for the County to continue using the software, licenses, materials, reports, documents, data, or documentation at no additional cost to the County, or propose an equivalent, subject to County approval. The acceptance of a proposed equivalent will be at the County's sole discretion. If no alternative is found acceptable to the County acting in good faith, the Contractor shall remove the software, licenses, materials, reports, documents, data, or documentation and refund any fees and any other costs paid by the County in conjunction with the use thereof.

2.38. Title - Risk of Loss

2.38.1.

Title to goods and/or all associated documentation shall pass to the County upon payment by the County for goods and/or associated documentation; or for construction projects, upon incorporation of the goods into the Project.

2.38.2.

The County shall be relieved from all risks of loss or damage to goods, and/or all documentation prior to the time title passes to the County as described above. The Contractor shall not be responsible for loss or damage to goods and/or documentation occasioned by negligence of the County or its employees.

2.39. Submittals

No portion of the work requiring submission of a shop drawing, drawing, manufacturer's literature, test data or other information, or a sample shall be commenced until the submittal has been approved by the County.

2.40. Clean Up

The Contractor shall at all times keep County premises free from accumulation of waste materials or rubbish caused by its operations.

2.41. Prevailing Wage (Construction and Labor)

2.41.1.

Contractors and all subcontractors of the Contractor shall conform to the labor laws of the State of Minnesota, [Ramsey County Prevailing Wage Ordinance No. 2013-329](#), and all other laws, ordinances, and legal requirements affecting the work in Ramsey County and Minnesota. The minimum wage rate per hour to be paid for each classification of work shall be the union wage rate in the locality of the project for those classifications over which unions have jurisdiction and the local prevailing rate for those classifications of work in the localities over which unions do not have jurisdiction.

The terms "prevailing wage", "minimum wage rate per hour", and "prevailing rate" as used in the contract, shall mean "prevailing wage rate" as defined in Minnesota Statutes §177.42.

Pursuant to Minnesota Statutes §§177.41 to 177.44 and corresponding Rules 5200.1000 to 5200.1120, all construction contracts funded in whole or in part by state funds are subject to the prevailing wages as established by the Minnesota Department of Labor and Industry. Specifically, all Contractors and subcontractors must pay all laborers and mechanics the established prevailing wages for work performed under the contract. Failure to comply with the aforementioned may result in civil or criminal penalties.

2.41.2.

Pursuant to the Ramsey County Prevailing Wage Ordinance No. 2013-329, the Prevailing Wage Rate must be paid under any contract with Ramsey County or under a subcontract to that contract with Ramsey County with an anticipated Project completion cost or anticipated Services contract value of over \$25,000.

2.41.3.

Throughout the term of this Agreement, the Contractor shall submit Certified Payroll Records within 14 days of the end of a pay period and in accordance with the requirements of Ramsey County Prevailing Wage Ordinance No. 2013-329. Failure of the Contractor to submit the Certified Payroll Records in accordance with the Ordinance may result in criminal or civil enforcement by the County, including, but not limited to termination of the agreement for cause, withholding of payments, and assessment of liquidated damages.

2.41.4.

For the purposes of this section, prevailing wage rates and basic hourly rates in the same or more similar trade or occupation in the area, and prevailing hours of labor, shall be as contained in the Certified Prevailing Wages for *Commercial Construction* or the Certified Prevailing Wages for *Highway and Heavy Construction* established by the State of Minnesota, Department of Labor and Industry, as set forth in Attachment A. Prevailing wage rates shall mean the Total Rate, consisting of Basic Hourly Rates plus Fringe Benefits. State of Minnesota Prevailing Wage Rates, current as of the date of the project's bid release, shall apply for the entire term of the Agreement.

2.41.5.

The Contractor shall post the applicable prevailing wage rates, hourly basic rates, and prevailing hours of labor, at a conspicuous location accessible by workers at the location of the Work. The Contractor shall physically include the requirements of the article and the schedules set forth in Attachment A in applicable agreements and contracts with Subcontractors, agents, or other persons doing or contracting to do all or any part of the Work under the Agreement. Incorporation of prevailing wage rates by reference in such agreements and contracts is not acceptable.

2.41.6.

In the event of any violation of the requirement that the Contractor or Subcontractor pay not less than 1-1/2 times the basic hourly rate to each laborer or mechanic employed directly on the job site when such employee is permitted or required to work in excess of the prevailing hours of labor, the Contractor or Subcontractor shall be liable for the unpaid wages.

2.42. Debarment and Suspension

Ramsey County has enacted Ordinance 2013-330 [Ramsey County Debarment Ordinance](#) that prohibits the County from contracting with contractors who have been debarred or suspended by the State of Minnesota and/or Ramsey County.

2.43. Project Labor Agreement

The County has determined that a Project Labor Agreement will not be required for this project.

2.44. Alteration

Any alteration, variation, modification, or waiver of the provisions of this Agreement shall be valid only after it has been reduced to writing and signed by both parties.

2.45. Performance and Payment Bonds

2.45.1.

The Contractor shall furnish a Performance and Payment bond, both meeting the following conditions:

2.45.1.1.

Issued by a bonding company licensed to do business in Minnesota.

2.45.1.2.

On the current list of Companies Holding Certificates of Authority as acceptable Sureties on Federal Bonds and as acceptable reinsuring companies as published in Circular 570 (Amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department.

2.45.1.3.

All bonds signed by an agent must be accompanied by a certified copy of the authority to act.

2.45.1.4.

Duly executed, notarized and updated Acknowledgment of both the Principal and Surety and the Surety's Power of Attorney must be attached to each of the two required bonds.

2.45.1.5.

Bond amounts shall not exceed the single bond limit for the Contractor's bonding company as set forth in the Federal Register current as of the bid date.

2.45.1.6.

Checks are not accepted in lieu of a Bond.

2.45.2.

The bonds shall each be in the amount of 100% of the Contract Price. The term "contract", as used herein, shall include the original agreement plus all subsequent change

orders and/or amendments. The Contract Price to which the principal is bound shall be the amount as reflected by the terms of the contract.

2.45.3.

The bonds shall cover the faithful performance of the Contract and the payments of all obligations arising thereunder. No work shall begin until the County has received the proper bonds specified under this clause.

2.45.4.

Bonds shall indemnify the County for any loss sustained by the County on account of or by reason of the acts of the Contractor or the acts of anyone else directly or indirectly employed by the Contractor in the performance of the Work for the Project.

2.46. Schedule Progress

The Owner shall, at its discretion, hold bi-weekly meetings to monitor progress and coordinate activities at the location of the Work. The Contractor and its Subcontractors shall attend these meetings, provide any required documentation of progress and anticipated construction scheduling as required by the Owner. These meetings will be held at a time and location determined by the Owner.

If, in the opinion of the County, the Contractor falls behind the progress schedule, or if it appears that the Contractor will not achieve Substantial Completion in accordance with the agreed upon schedule, the Contractor shall take any and all steps necessary to improve the progress to assure Substantial Completion in accordance with the schedule, at no additional cost to the County.

The County may require the Contractor to submit for approval and at no additional cost to the County, such supplementary progress schedules as may be deemed necessary to demonstrate the manner in which the approved progress schedule or date of Substantial Completion will be regained.

Failure of the Contractor to comply with the requirements of this subparagraph shall be grounds for determination that the Contractor is not performing the Work with such diligence as will ensure completion within the time specified in the Agreement between the County and the Contractor. Upon such determination, the County may terminate the Contractor's right to proceed with the Work, or any separable part thereof, in accordance with other applicable provisions of the Contract or may obtain the services required to bring the Work into compliance with the schedule at the Contractor's cost.

2.47. Changes in Work

Changes in the Work may be accomplished after execution of the contract by Change Order, Construction Change Directive, or order for a minor change in the Work, subject to the limitations stated in the Contract Documents. A change in the Work that affects the Contract Price or schedule may be made only by Change Order.

A Change Order shall be based upon agreement between the County and the Contractor; a Construction Change Directive may be issued by the County without the agreement of the Contractor; an order for a minor change in the Work may be issued by the Contractor.

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

Change Orders

A Change Order is a written instrument prepared by the Contractor and signed by the County and the Contractor stating their agreement upon all of the following:

- a change in the Work;
- the amount of the adjustment, if any, in the Contract Price; and
- the extent of the adjustment, if any, in the Project Schedule.

No work consistent with the changes in the Change Order shall commence until the Change Order has been reduced to writing and signed by both parties.

Construction Change Directives

A Construction Change Directive is a written order prepared and signed by the County, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Price, schedule, or both.

2.48. Minor Changes in the Work

The Contractor shall have authority to make minor changes in the Construction Documents and construction consistent with the intent of the Contract Documents when such minor changes do not involve adjustment in the Contract Price or extension of the Project schedule. The Contractor shall promptly inform the County, in writing, of minor changes in the Construction Documents and construction.

2.49. Oral Agreements

Verbal orders and suggestions as to the performance of the work may be given from time to time by the Owner's Representative, or by other representatives of the municipality, county, state or other government or regulatory agency through the Owner's Representative. When in the opinion of the Contractor, such verbal orders or suggestions entitles the Contractor to a change in Contract Price or Contract Time or both, the Contractor must request a Change Order from the Owner. No verbal order or suggestion of any representative or employee of the municipality, county, state or other governmental or regulatory agency, or of any other person, shall be construed as authorizing any claims on the part of the Contractor for extra compensation for labor, material or other items pertaining to such work, or for damages or any other expenses incurred because of the Contractor's compliance therewith. The Contract Price and Contract Time may only be changed by Change Order.

2.50. Maintenance of Record Drawings at Site and Shop Drawings

The Contractor shall maintain at the Project site for the County one record copy of the drawings, specifications, product data, samples, shop drawings, addenda, Change Orders and other modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be delivered to the County upon completion of construction as a record of the Work as constructed prior to final payment.

2.51. Final Inspection

2.51.1.

Upon written notice from the Contractor that the Project is completed, the Owner's Representative together with the Owner, and other appropriate parties, will make a preliminary inspection with the Contractor present. Upon completion of this preliminary inspection, the Owner's Representative will notify the Contractor, in writing, of any particulars in which this inspection reveals that the work is defective or incomplete. This list shall be referred to as a "Punch List".

2.51.2.

Upon receiving the Punch List from the Owner's Representative, the Contractor shall immediately undertake the actions required to remedy defects and complete the Project to satisfaction of the Owner and the Owner's Representative.

2.51.3.

When the Contractor has corrected or completed the items as listed in the Owner's Representative's written notice, the Contractor shall inform the Owner's Representative, in writing, that the required Work has been completed. Upon receipt of this notice, the Owner's Representative, in the presence of the Contractor, Owner, and other appropriate parties shall make their final inspection of the Work.

2.51.4.

If the Owner's Representative finds all Work satisfactory at the time of this second inspection, the Contractor will be allowed to make application for final payment in accordance with the provisions of the Contract Documents. If the Owner's Representative still finds dissatisfaction with the same Work, the Owner's Representative shall inform the Contractor of the deficiencies and will deny the Contractor's request for final payment, until such time as the Contractor has satisfactorily completed the required Work. The cost of the third or subsequent inspections shall be borne by the Contractor.

2.52. Final Payment

After the final inspection and acceptance by the Owner of all Work under the Contract, the Contractor shall prepare an application for final payment and submit it to the County for approval. The total amount of final payment due the Contractor under this Agreement shall consist of the total Contract Price as adjusted in accordance with approved Change Orders, less all previous payments to the Contractor and subject to withholding of any amount due the County as liquidated damages, as provided in Section n/a below, or as otherwise due under the Contract Documents or applicable law. The Application for final payment shall be accompanied by the following:

1. final lien releases and claim waivers (in a form acceptable to the County) by the Contractor and all persons performing Work and supplying material or services to the Contractor;
2. an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the County might in any way be responsible, have been paid or otherwise satisfied;
3. consent of surety, if any, to final payment;
4. two copies of Operation & Maintenance Manuals with provided warranty documentation for products and two copies of as-built plans identifying modifications to original plans;
5. if required by the County, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Agreement, to the extent and in such form as may be designated by the County;
6. the Certificate of Project Completion form (provided by the County);
7. a copy of the completed State of Minnesota Form IC-134, signed by the State Commissioner of Taxation, for the Contractor and its subcontractors; and

8. a complete report describing efforts and outcomes of those efforts towards achievement of Project SBE and labor utilization goals; and sustainability goals, if applicable.

2.53. Warning Signs and Barricades

The Contractor shall at all times so conduct their Work as to insure the least possible obstruction to traffic and inconvenience to the general public and the residents in the vicinity of the Work, and to insure the protection of persons and property. No road or street shall be closed to the public except with the permission of the proper governmental authority. The Contractor shall warn effected motorists, pedestrians or residents of any construction practices or situations which could be dangerous, cause personal injuries or property damage. Fire hydrants on or adjacent to the work shall be kept accessible to fire-fighting equipment at all times. Temporary provisions shall be made by the Contractor to insure the use of sidewalks and the proper functioning of all gutters, sewer inlets, drainage ditches and irrigation ditches, which shall not be obstructed. The Owner's Representative reserves the right to require immediate backfilling of any street area which the Owner's Representative deems it required for safe traffic circulation within or adjacent to the Work.

2.54. Crossing Utilities

2.54.1.

Where the prosecution of the Work results in the crossing of highways, railroads, streets or utilities under the jurisdiction of state, county, city or other public or private entities, the Contractor shall secure written permission from the proper authority to cross said highway, railroad, street or utility before further prosecuting the Work. A copy of the written document granting permission shall be filed with the Owner and Owner's Representative before any work is done. The Contractor shall be required to obtain a written release from the applicable authority upon completion of the Work. A copy of this written release shall be filed with the Owner and Owner's Representative before final acceptance of the work is granted.

2.54.2.

The Contractor shall protect that which is to remain and shall conduct all installation operations in a manner that will not damage or jeopardize the surrounding plant life designated to remain. Equipment operating around existing trees shall use extreme caution to prevent damage to roots, trunks, and branches. The Contractor shall verify the location and elevation of existing utilities in the area of work. Any damage to utilities, trees or other existing-to-remain items shall be repaired at the Contractor's expense.

2.55. Sanitary Provisions

The Contractor shall provide and maintain such sanitary facilities for the use of Contractor's employees and its Subcontractors as may be necessary to comply with the laws, rules or regulations of the federal, state, and local governments, or agencies or departments thereof.

2.56. Preservation of Historical Objects

2.56.1.

Where historical objects of potential architectural, archeological or paleontological nature are discovered within the areas on which the Contractor's operations are in progress, the Contractor shall restrict or suspend their operations in the immediate area of the discovery as may be necessary to preserve the discovered objects until the Owner has made arrangements for their disposition or has recorded the desired data relative thereto.

2.56.2.

The Contractor shall immediately notify the Owner of any historical objects discovered as the Work is being performed, and shall aid in the preservation and salvage program decided upon, as may be requested or ordered by the Owner. Work requiring a change to the Contract Price shall not be performed without the written authorization of the Owner.

2.56.3.

The Owner shall have the right to restrict or suspend the Contractor's operations in the immediate area where historical objects are discovered for a period not to exceed 72 hours, without claim being made by the Contractor for any damages they might suffer as a result thereof.

2.57. Lands by Owner

The Owner shall provide access to the lands shown on the drawings upon which the Work is to be performed. The Owner shall also provide or obtain the right-of-way for access to the land. Any delay by the Owner in furnishing access to the land shall be deemed proper cause for consideration of adjustment in the time of completion, but not in the Contract Price.

2.58. Land by Contractor

Any additional land and access thereto not shown on the drawings that may be required for temporary construction facilities or for storage of Materials shall be provided by the Contractor with no liability to the Owner. The Contractor shall confine its apparatus, storage of Materials, and operation of its workers to those areas described in the drawings and specifications; and such additional areas that may be provided at the contractor's expense. The Contractor shall notify the Owner's Representative in writing of those lands provided at the contractor's expense. The Contractor shall not disturb any areas outside of the construction limits including wetlands, woodlands and previously restored work areas.

2.59. Private Property

The Contractor shall not enter upon private property for any purpose without obtaining permission from the owner, and shall be responsible for the preservation of all public property, trees, monuments, etc., along and adjacent to the street and/or right-of-way, and shall use every precaution necessary to prevent damage or injury thereto. The Contractor shall protect carefully from disturbance or damage all monuments and property marks until the Owner's Representative has witnessed or otherwise referenced their location and shall not remove them until directed.

2.60. Shop Drawings

2.60.1.

The Contractor shall provide Shop Drawings as may be necessary for the prosecution of the Work as required by the Contract Documents. The Owner's Representative shall promptly review all shop drawings. The Owner's Representative's review of any Shop Drawing shall not release the Contractor from responsibility for deviations from the Contract Documents. The discovery of any Shop Drawing which substantially deviates from the requirements of the Contract Documents shall be evidenced by a Change Order or corrected and resubmitted by the Contractor, at the Owner's Representative's discretion.

2.60.2.

When submitting for the Owner's Representative's review, Shop Drawings shall bear the Contractor's certification that the Contractor has reviewed, checked and approved the Shop Drawings and that they are in conformance with the requirements of the Contract Document.

2.60.3.

Portions of the Work requiring a Shop Drawing or sample submission shall not begin until the Shop Drawing or submission has been reviewed by the Owner's Representative. A copy of each approved Shop Drawing and each approved sample shall be kept in good order by the Contractor at the site and shall be available to the Owner's Representative.

2.60.4.

Prepare Project-specific information, drawn accurately to scale. Do not base Shop Drawings on reproductions of the Contract Documents or standard printed data. Fully illustrate requirements in the Contract Documents. Include the following information, as applicable:

- a. Dimensions.
- b. Identification of products.
- c. Fabrication and installation Plans.
- d. Roughing-in and setting diagrams.
- e. Wiring diagrams showing field-installed wiring, including power, signal, and control wiring.
- f. Shop work manufacturing instructions.
- g. Templates and patterns.
- h. Schedules.
- i. Notation of coordination requirements.
- j. Notation of dimensions established by field measurement.
- k. Seal and signature of professional engineer if specified.
- l. Wiring Diagrams: Differentiate between manufacturer-installed and field-installed wiring.

2.60.5.

Submit opaque (bond) and electronic copies of each submittal. The Owner's Representative will return one copy.

2.61. Substitutions After Award of Agreement

Whenever a Material, article or piece of equipment is identified in the Contract Documents by reference to brand name or catalog number, it shall be understood that this reference is for the purpose of defining the performance or other salient requirements and that other products of equivalent capacities, quality and function shall be considered. The Contractor may recommend the substitution of a Material, article, or piece of equipment of equivalent substance and function for those referred to in the Contract Documents by reference to brand name or catalog number, and if, in the opinion of the Owner's Representative, such Material, article, or piece of equipment is of equivalent substance and function to that specified, the Owner's Representative may approve its substitution and use by the Contractor. Where applicable the Owner's Representative will only approve substitutions after the Contractor has received approval from the municipality, county, state or other regulatory agencies with jurisdiction. The Owner's Representative will not lobby for the approval of the substituted Material. Any cost differential

shall be deductible from the Contract Price and the Contract Documents shall be appropriately modified by Change Order. The Contractor warrants that if substitutes are approved, no major changes in the function or general design of the Project will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the Contractor without a change in the Contract Price or Contract Time. Requests for review of substitute items will not be accepted by the Owner's Representative from anyone other than the Contractor. The Contractor shall reimburse the Owner for the charges incurred by the Owner's Representative to evaluate each proposed substitution.

2.62. Submittals

2.62.1.

No portion of the Work requiring submission of a Shop Drawing, drawing, manufacturer's literature, test data or other information, or a sample shall be commenced until the submittal has been approved by the Owner.

2.62.2.

The Contractor shall furnish one copy of complete product data for every manufactured item of equipment and all components to be used to perform the Work, including specific performance data, material description, rating, capacity, working pressure, material gauge or thickness, brand name, catalog number and general type. This data shall be compiled by the Contractor and reviewed by the Owner's Representative before any of the equipment is ordered. All data shall be indexed according to specification section and paragraph for easy reference. After review, this data shall become a part of the Contract, and may not be deviated from except upon the written approval of the Owner's Representative.

2.62.3.

Product data for equipment reviewed by the Owner's Representative does not in any case supersede the Contract Documents. The review of the Owner's Representative shall not relieve the Contractor from responsibility for deviations from drawings or specifications unless the Contractor has in writing called the Owner's Representative's attention to such deviations at the time of furnishing said data. Nor shall such review relieve the Contractor from responsibility for errors of any sort in the items furnished. The Contractor shall check the work described by the product data with the Contract.

2.62.4.

It shall be the responsibility of the Contractor to insure that items to be furnished fit the space available. The Contractor shall take necessary field measurements to ascertain space requirements, including those for connections and shall order such sizes and shapes of equipment that the final installation shall suit the true intent and meaning of the Drawings and Specifications.

2.62.5.

Where equipment requiring different arrangement of connections from those shown is approved, it shall be the responsibility of the Contractor to install the equipment so as to allow for proper operation and to be in harmony with the intent of the drawings and specifications, and to make all changes in the Work required by the different arrangement of connections.

2.63. Intent of Plans and Specifications

The intent of the Plans and Specifications is that the Contractor shall furnish all labor and materials, equipment and transportation necessary for the proper execution and completion of the Work unless specifically noted otherwise. The Plans and Specifications are complementary,

and what is required by one shall be as binding as if required by all. Performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results. The Contractor shall do all the Work shown on the Plans and described in the Specifications and all incidental work considered necessary to complete the Project in an acceptable manner, and to fully complete the Work, ready for use, occupancy and operation by the Owner.

2.64. Discrepancies

Any ambiguity or discrepancy drawings and Specifications, no matter how seemingly insignificant to the Contractor, shall be brought immediately to the attention of the Owner's Representative for clarification. The Owner's Representative shall promptly correct such ambiguity or discrepancy in writing. If the Contractor fails to bring any ambiguity or discrepancy in writing of which it was or should have been aware, the Contractor shall assume the risk of loss because of, and shall be allowed no claim for the misinterpretation of, the drawings and Specifications contrary to the intended interpretation of the Owner's Representative. Work done by the Contractor after the Contractor's discovery of such discrepancies, inconsistencies or ambiguities shall be done at the Contractor's risk.

2.65. Additional Instructions and Detail Drawings

The Contractor may be furnished additional instructions and detail drawings by the Owner's Representative, as necessary, to carry out the Work required by the Contract Documents. The additional drawings and instruction thus supplied will become a part of the Contract Documents. The Contractor shall carry out the Work in accordance with the additional drawings and instructions.