

**GENERAL CONDITIONS OF
CONTRACT WITH THE DAKOTA COUNTY CDA**

FOR LABOR AND MATERIALS

INDEPENDENT CONTRACTOR. Contractor is an independent contractor and nothing in this Contract shall be construed to create the relationship of agents, partners, joint venturers, associates, or employer and employee between the CDA and Contractor.

TIMELINESS. Time is of the essence in this Contract. The failure of either party to perform its obligations in a timely manner may be considered by the other party as a material breach.

FORCE MAJEURE. Neither party shall be liable to the other party for any loss or damage resulting from a delay or failure to perform due to unforeseeable acts or events outside the defaulting party's reasonable control, providing the defaulting party gives notice to the other party as soon as possible. Acts and events may include acts of God, acts of terrorism, war, fire, flood, epidemic, acts of civil or military authority, and natural disasters.

LICENSES. At its own expense, Contractor shall procure all licenses, permits or other rights required for the provision of services contemplated by this Contract. Contractor shall inform the CDA of any changes in the above within five (5) days of occurrence.

INDEMNIFICATION. Any, and all claims, that arise or may arise against Contractor, its agents, servants or employees as a consequence of any act or omission on the part of Contractor or its agents, servants, employees while engaged in the performance of the Contract shall in no way be the obligation or responsibility of the CDA. Contractor shall indemnify, hold harmless and defend the CDA, its officers and employees against any and all liability, loss, costs, damages, expenses, claims or actions, including attorney's fees which the CDA, its officers or employees may hereafter sustain, incur or be required to pay, arising out of or by reason of any act or omission of Contractor, its agents, servants or employees, in the execution, performance, or failure to adequately perform Contractor's obligations pursuant to this Contract.

ASSIGNMENT/SUBCONTRACTING. The Contractor shall not assign or subcontract this Contract without prior written consent of the CDA, in which case Contractor is responsible for the performance of its subcontractors or assignees. Contractor shall follow the requirements of Minn. Stat. §471.425 (payments to subcontractors), shall require the subcontractor to provide proof of the below-described insurance to the CDA prior to beginning work under this Agreement and shall require the subcontractor to agree in writing to defend, hold harmless and indemnify the CDA from any and all liability arising out of the subcontractor's performance of its duties.

INSURANCE TERMS.

Contractor shall provide to the CDA, prior to or concurrent with the execution of this Contract, certificate(s) of insurance naming Dakota CDA as certificate holder or certified copies of such existing policies of insurance, demonstrating:

- General liability coverage of at least \$1,500,000 per occurrence and aggregate and **naming Dakota CDA as an additional insured;**
- Automobile liability coverage of at least \$1,500,000 per occurrence and aggregate and **naming Dakota CDA as an additional insured;**
- Workers' compensation coverage or certification of excluded employment from workers' compensation requirements.

Contractor shall pay all retentions and deductibles under such policies of insurance. If Contractor does not have existing coverage(s) or has coverage(s) in limits less than that set out above, Contractor must obtain from the CDA, prior to or concurrent with the execution of this Contract, a waiver of the coverage(s) or agreement to lower coverage limits from the CDA.

BOND FOR G/HVACR CONTRACTORS. In accordance with Minn. Stat. § 326.992, if Contractor will be performing any work having to do with gas, heating, ventilation, cooling, air conditioning, fuel burning or refrigeration, the Contractor must give bond in the amount of \$25,000 to the State of Minnesota for the benefit of persons suffering financial loss by reason of Contractor's failure to comply with the requirements of the State Mechanical Code.

RECORDS/AUDITS. Contractor's bonds, records, documents, papers, accounting procedures and practices, and other evidences relevant to this Contract are subject to the examination, duplication, transcription and audit by the CDA and either the Legislative or State Auditor, pursuant to Minn. Stat. § 16C.05, subd. 5. Such evidences are also subject to review by the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Contract. The Contractor agrees to maintain such evidences for a period of six (6) years from the date services or payment were last provided or made or longer if any audit in progress requires a longer retention period.

DATA PRIVACY. For purposes of this Contract, all data on individuals collected, created, received, maintained or disseminated shall be administered consistent with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, and the Minnesota Rules implementing the Act now in force or hereafter adopted as well as Federal laws on data privacy, and Contractor must comply with those requirements as if it were a governmental entity. The Contractor will strictly comply with these statutes and rules. All subcontracts shall contain the same or similar data practices compliance requirements.

CONFIDENTIALITY CLAUSE. Contractor acknowledges that the CDA, in connection with Contractor's performance of this Agreement, may transmit certain private or Confidential Information, as defined in the Minnesota Data Practices Act, to Contractor. Contractor

agrees to implement such procedures as are necessary to assure protection of the private and Confidential Information.

COMPLIANCE WITH LAWS/STANDARDS. Contractor shall abide by all Federal, State and local laws; statutes, ordinances, rules and regulations pertaining to this Contract and this Contract shall be construed in accordance with the substantive and procedural laws of the State of Minnesota. All proceedings related to this Contract shall be venued in the county of Dakota, State of Minnesota.

NON-DISCRIMINATION. Contractor agrees that, in the hiring of all labor for the performance of any work under this Contract, it will not, by reason of race, creed, color, sex, national origin, disability, sexual orientation, age, marital status or public assistance status, discriminate against any person and who qualifies and is available to perform the work to which such employment relates. Contractor agrees to comply with all Federal, State, and local non-discrimination laws and ordinances, in particular the applicable provisions of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972. When required by law or requested by the CDA, Contractor shall furnish a written affirmative action plan.

CONTRACTOR DEBARMENT, SUSPENSION AND RESPONSIBILITY CERTIFICATION. By signing this Contract the Contractor is certifying that the federal government or the Minnesota Commissioner of Administration has not suspended or debarred the Contractor or its Principals and Employees, based upon Federal Regulation 45 CFR 92.35 and Minn. Stat. §16C.03, subd. 2 respectively. Contractors may be suspended or debarred when it is determined, through a duly authorized hearing process, that they have abused the public trust in a serious manner.

EXPRESS WARRANTIES. Contractor expressly warrants that all goods and products and workmanship provided under this Agreement shall conform to the CDA's specifications as described in this Agreement. Contractor shall replace any non-conforming goods and products and remedy any defects in the work and pay for any damage to other work resulting from the non-conforming work, at its own expense, and pay for any damage to other goods or products resulting from the non-conforming goods or products, that shall appear within a period of TWELVE MONTHS from the date of final acceptance by CDA of the goods or products.

Neither the final certificate of payment nor any provision in the contract documents nor partial or entire use of the final products and work by the CDA shall constitute an acceptance of work not done in accordance with the contract documents or relieve Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The CDA will give notice of observed defects with reasonable promptness.

TERMINATION WITHOUT CAUSE. The CDA, upon thirty (30) days written notice to the Contractor, may terminate this Contract without cause.

TERMINATION FOR CAUSE. In addition to other specifically stated terms of this Contract or as otherwise provided by law, the following conditions, unless excused shall warrant termination of this Contract for cause:

- A. Making material misrepresentations either in the attached exhibits and documents or in any other material provision or condition relied upon in the making of this Contract.
- B. Failure to provide services or payment called for by this Contract within the time specified herein or any extension thereof.
- C. Failure to perform any other material provision of this Contract.
- D. Failure to diligently administer the work so as to endanger performance of the terms of this Contract.

NOTICE. Either party may terminate this Contract for cause by giving seven (7) days written notice of its intent to terminate to the other party unless a different procedure and/or effective date is provided within the specific article or paragraph of this Contract under which the default, failure or termination occurs. Said notice shall specify the circumstances warranting termination of the Contract. The terminating party has the option, but is not required, to provide the other party an opportunity to cure the specified default. If an opportunity to cure is provided, it shall be specifically described in the notice of termination.

DELIVERY OF NOTICE/EFFECTIVE DATE. Notice of Termination for Cause or Without Cause shall be made by certified mail or personal delivery to the authorized agent of the other party. Notice is deemed effective upon delivery of the Notice of Termination to the name and address of the person who signs this Contract for each party.

DUTIES OF CONTRACTOR UPON TERMINATION WITH CAUSE OR WITHOUT CAUSE.

Upon delivery of the Notice of Termination, and except as otherwise provided, Contractor shall:

- A. Discontinue provision of services under this Contract on the date and to the extent specified in the Notice of Termination.
- B. Immediately notify all clients who are receiving services pursuant to this Contract.
- C. Cancel all orders and subcontracts to the extent that they relate to the performance of services cancelled by the Notice of Termination.
- D. Complete performance of such services as shall not have been cancelled by the Notice of Termination.
- E. Return all CDA property in their possession within seven (7) days to the extent that it relates to the performance of services cancelled by the Notice of Termination.
- F. Submit an invoice for the performance of services prior to the effective date of termination within thirty (30) days of said date.
- G. Maintain all records relating to the performance of the Contract as may be required by the CDA or State law.

DUTIES OF CDA UPON TERMINATION OF THE CONTRACT FOR CAUSE OR WITHOUT CAUSE. Upon delivery of the Notice of Termination, and except as otherwise provided, the CDA:

- A. Shall make within 30 days of its receipt of Contractor's invoice referenced in paragraph F above, final payment for any services satisfactorily provided up through the date of termination in accordance with the terms of this Contract.
- B. Shall not be liable for any services provided after notice of termination, except as stated above or as authorized by the CDA in writing.

EFFECT OF TERMINATION FOR CAUSE OR WITHOUT CAUSE. Termination of this Contract shall not discharge any liability, responsibility or right of any party that arises from the performance of or failure to adequately perform the terms of this Contract prior to the effective date of termination.

TERMINATION BY CDA - LACK OF FUNDING. Notwithstanding any provision of this Contract to the contrary, the CDA may immediately terminate this Contract if it does not obtain funding from the Minnesota Legislature, Minnesota agencies or other funding sources, or if its funding cannot be continued at a level sufficient to allow payment of the amounts due under this Contract. The CDA is not obligated to pay for any services that are provided after written Notice of Termination for lack of funding. The CDA will not be assessed any penalty or damages if the Contract is terminated due to lack of funding.

DAMAGES FOR BREACH/SET-OFF. Notwithstanding any other provision of this Contract to the contrary, upon breach of this Contract by Contractor the CDA may withhold final payment due to Contractor for purposes of set-off until such time as the exact amount of damages due is determined.

MODIFICATIONS. Any alterations, variations, modifications, or waivers of the provisions of this Contract shall only be valid when they have been reduced to writing and signed by the authorized representatives of both parties.

WAGE WITHHOLDING TAX. Pursuant to Minn. Stat. §290.97, Dakota CDA shall make final payment to Contractor only upon satisfactory showing that contractor and any subcontractors have complied with the provisions of Minn. Stat. §290.92 with respect to withholding taxes, penalties, or interest arising from this contract. A certificate by the commissioner of revenue (Minnesota Department of Revenue Form IC-134, entitled "Withholding Affidavit for Contractors") shall satisfy this requirement with respect to the contractor or subcontractor. Form IC-134 Form and Instructions are found at <http://www.taxes.state.mn.us/forms/ic134.pdf>.

SUBMITTAL-PRICE BREAKDOWN PER PROPERTY PER EACH YEAR OF THE CONTRACT. The contractor who is awarded the contract will be required to provide a price break down for each property. Cost breakdown to be received in less than (2) weeks after executing the contract.

PAYMENT. Payment shall be made according to monthly billings. All invoices submitted for payment will be processed within 30 days, as long as all necessary documentation is provided. Invoices shall list unit address, and shall provide a cost breakdown of square footage and any additional labor or material charges.

DATA PRIVACY. All rules and regulations set forth in the Minnesota Government Data Privacy Act [coded as Minnesota Statutes, Chapter 13, Sections 13.01 through 13.99], particularly those rules and regulations which address information about persons receiving assistance from the CDA and/or the location of CDA assisted housing, shall be complied with.

CHANGES IN THE WORK. Costs related to a change shall be direct costs. All indirect costs shall be included in the contractors overhead. Overhead (including general conditions) and profit related to a change shall be limited to 10% of the net cost of work by the contractor and 10% of the cost of work by sub-contractors. Sub-contractors markup is similarly limited. Contractor and subcontractor shall provide itemized substantiating data to permit evaluation of costs.

DECLARATION OF INDEMNIFICATION. The contractor shall indemnify and hold harmless the owner and their agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense: a) is attributable to bodily injury, sickness, disease or death or to injury or to destruction of tangible property – other than work itself – including the loss of use resulting there from: and b) is caused in whole or in part by any negligent act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. In any and all claims against the owner or any of their agents or employees, by any employees of the contractor, any subcontractor or anyone directly or indirectly employed by any of them or anyone whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited by any limitation on the amount of type of damages, compensation or benefits payable by or for the contractor or any subcontractor under worker's compensation acts, disability benefit acts or other employee benefit acts.