

FOR BOARD ACTION

Agenda Item # 5

Meeting Date:

9/26/06

SUBJECT: Bid for Construction Services
Surety Waterproofing Co.
Partial Masonry Restoration for Silver Lake Plant

PREPARED BY: Tony Dzubay, Power Production Engineer RPU

ITEM DESCRIPTION: In March, 2006, TSP of Rochester, MN was hired through a Professional Engineering Services Contract to assist RPU personnel with the design, bid process and supervision for the partial masonry restoration of the Silver Lake Plant. The scope of this bid includes brickwork on the roof above Unit 1 and Unit 2 boilers. RPU and TSP have completed the design and bidding process and are awaiting the approval to schedule the work.

The request for bids was advertised locally. On September 19, 2006 three acceptable bids, with respect to the plans and specifications prepared by TSP, were received. The low bidder was Surety Waterproofing Co. with a base bid of \$54,280. The other two bids from AJ Spanders Co., Inc. and Advanced Masonry Restoration were \$81,215 and \$198,600, respectively. Surety was present at the bid opening and their bid was confirmed to be mathematically correct with all materials and work accounted for.

RPU will require Surety to begin work in late 2006 or early 2007. All work shall be completed by May 20, 2007 per the contract.

The contract also includes four alternates that were priced out by each bidder. TSP and RPU recommends that Alternates #1 and 4 be rejected and Alternate #2 & 3 be accepted for \$2,180 and \$2,870, respectively. Both accepted alternates increase the waterproofing of the masonry and will decrease the possibility of any future problems.

\$50,000 has been planned for this project in the annual SLP cost center budget for 2006.

UTILITY BOARD ACTION REQUESTED:

Staff recommends that the Board approve a purchase order agreement in the amount of \$59,330 for the construction services for the partial masonry restoration of the Silver Lake Plant through Surety Waterproofing Co.



General Manager



Date

Bid Tab Sheet

Rochester Public Utilities - SLP Masonry Restoration 2006

Company (Bidder)	Base Bid	Alt #1	Alt #2	Alt #3	Alt #4	Cost per Brick	Cost per sq. ft	#Bricks Replaced	Bid Bond
AJ Spanders Co., Inc	\$ 81,215	\$ 2,700	\$ 2,000	\$ 5,750	\$ (3,900)	\$25/brick	\$77/sq ft	1550	yes
Surety Waterproofing Co.	\$ 54,280	\$ 3,200	\$ 2,180	\$ 2,870	\$ -	\$14/brick	\$68/sq ft	-	yes
Advanced Masonry Restoration	\$ 198,600	\$ 5,000	\$ 4,700	\$ 18,000	\$ -	\$29/brick	\$80/sq ft	300	yes

REBID

PROPOSAL FORM....COMBINED CONTRACT

TO: RPU Silver Lake Power Plant

The undersigned hereby submits the following bid for TSP Project No. 0105X681.03A, RPU SILVER LAKE POWER PLANT MASONRY RESTORATION FOR 2006 - REBID, according to Construction Documents prepared by TSP, Inc., Architects/Engineers, Rochester, MN.

BASE BID: _____

_____ Dollars (\$ _____)
NOTE - Base bid shall include allowances as required; see Section 01020.

ALTERNATES

(See Section 01030 for description of Alternates)

ALTERNATE 1: PAINT LOUVERS, DOORS AND WINDOWS.....ADD/\$ _____

ALTERNATE 2: WATER REPELLANT ON ALL RESTORED MASONRY
.....ADD/\$ _____

ALTERNATE 3: CAULK STONE COPING JOINTS AND CRACKS.ADD/\$ _____

COMPLETION TIME

I agree according to Article 8 of the Conditions of the Contract to substantially complete the work on or before October 27, 2006.

UNIT PRICES (See Sections 01020 and 01026 for description of brick allowance/M and Unit Prices respectively)

Replace Face Brick:.....Add \$ _____ /Ea Brick
Replace Face Brick:.....Add \$ _____ /SF of Brick

REPLACEMENT FACEBRICK (Fill in the # of brick replaced and included in the base bid).

Existing loose, cracked, spalled brick figured to be replaced: # of brick being replaced.
Collateral adjacent brick becoming loose and being replaced too: # of brick being replaced too.

In submitting this bid it is understood that the Owner reserves the right to reject any and all bids. It is further agreed this bid shall not be withdrawn within forty-five (45) days after bid opening as provided in the contract documents.

If this bid is accepted within the time stated or agreed upon between Owner and Contractor and the undersigned Contractor fails to either commence the work or fails to provide the required bonds, the bid security shall be forfeited, not as a penalty, but as liquidated damages to the Owner by reason of your failure to perform. The amount of damages is limited to the lesser amount of the difference between the face value of the bid securities.

The following addenda have been received: _____

Date: _____

Respectfully submitted,

(Street Address)

(Firm Name)

(City and State)

(By)

THE END

SECTION 00500
AGREEMENT

PART 1 - GENERAL

1.1 Documents:

- A. The selected contractor will be required to enter into a contract with the Owner.
- B. The contract that will be used between the Owner and the Contractor is standard AIA form:
 - 1. A101, 1997 Edition, Owner-Contractor Agreement - Stipulated Sum.

-THE END-

SECTION 00700
CONDITIONS OF THE CONTRACT

PART 1 - GENERAL

1.1 Documents:

- A. The Conditions for this project are on the pages following this page.
- B. The "General Conditions" are the AIA A201-1997, modified for this project. All articles 1-14 are included under these conditions as modified. These conditions will form part of the contract whether or not they are bound into this specification in written form.

-THE END-

SECTION 00800
SUPPLEMENTAL GENERAL CONDITIONS

-General:

The following Supplemental Conditions modify the "General Conditions" referenced in Section 00700. Articles are numbered the same as General Conditions of the Contract but contain prefix (S) preceding the article number. When portions of "General Conditions" are modified or deleted by supplemental conditions, the unaltered portions shall remain in effect. Articles not modified will be listed as "No Change."

-Project Information:

The name of the project is given on the project manual cover page.

The name of the Owner is given on the project manual cover page.

The name of the Architect/Engineer is given on the project manual cover page.

-Article 1: General Provisions

(S) 1.2.2.1 For the most part, the specification has been divided into sections following CSI format for bidders' convenience. Owner and Architect assume no responsibility or obligation regarding labor jurisdictional disputes due to arrangement of specifications. Unless noted otherwise, the Contractor is responsible for each division of work under this contract.

(S) 1.2.4 Standard specifications, rules, codes, instructions, recommendations and references referred to in the Project Specifications shall be the latest edition unless a specific edition is specified. If standard specifications are revised prior to completion of any part of the work to which such revisions would pertain, the Contractor may, if approved by the Architect, perform such work in accordance with the revised specifications. Standard specifications, except as modified in the Project Specifications, shall have full force and effect as though included in the Project Specifications.

Add following to end of paragraph 1.5.2:

(S) 1.5.2.1 Prior to execution of the Agreement, the Contractor and each Subcontractor visually evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitations, (a) the location, condition, layout, and nature of the Project site and surrounding areas; (b) generally prevailing climatic conditions; (c) anticipated labor supply and costs; (d) availability and cost of materials, tools, and equipment; and (e) other similar issues. Except as set forth in Section 10.3, as between the Owner and the Contractor, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Subsection.

-Article 2: Owner

Add to:

(S) 2.2.3.1 Except for surveys or grade information, the contractor shall compare the information furnished by the Owner with visibly observable physical conditions and the Contract Documents and, on the basis of such review, promptly report to the Owner and the Architect any known conflicts, errors or omissions.

Delete paragraph 2.2.5.

(S) 2.2.5.1 A minimum of 4 sets will be available to the contractor. Extra copies of drawings and project manuals, beyond what Owner has made available to Contractor, will be furnished at the cost of reproduction, postage, and handling.

(S) 2.4.1 Delete the end of the first sentence and beginning of the second sentence beginning after the word "...promptness" and ending with the word..."deficiencies," the first time it appears in the second sentence. Delete the entire sentence were it occurs as the second to the last sentence in the paragraph 2.4.1.

(S) 2.5 Extent of Owner's Rights:

(S) 2.5.1 The rights stated in Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (a) granted in the Contract Documents, (b) at law, or (c) in equity.

(S) 2.5.2 In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the contact Documents.

-Article 3: Contractor

(S) 3.2.1.1 The Contractor shall, therefore, satisfy itself as to the accuracy of all dimensions and locations. In all cases of interconnections of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work. Any errors due to the contractor's failure to so verify all such dimensions or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

(S) 3.3.2.1 Contractor shall closely coordinate his work operations with that of Owner's other contractors. See also Articles 3.3.2.2, 3.3.2.3 and 6.2.1.

(S) 3.3.2.1 Construction conferences are required prior to start of work and periodically throughout the construction process. The frequency of meetings will coincide with progress of the work and issues to be resolved, but at least once prior to start of work and usually once or twice a month thereafter, construction meetings will be held. Owner, Architect, Contractor, and prime subcontractors will meet to review Progress Schedule and Contract Documents, resolve questions concerning the project, and discuss when construction meetings should be held. Prior notice of meeting will be 48 hours minimum.

(S) 3.3.2.2 Each contractor shall be responsible for keeping notes concerning items discussed during conference.

(S) 3.3.4 Inspection of the progress, quantity or quality of the Work done by the Owner, any Owner's representative, any governmental agency, or the Architect, or any inspector, shall not relieve the Contractor of any responsibility for the compliance of the Work with the Contract Documents.

(S) 3.3.2.3 Contractors shall have superintendent and/or other persons authorized to make legally binding decisions for the Contractor at these meetings.

(S) 3.4.2.1 After the contract has been executed, the Owner and Architect will consider a formal request for the substitution of products in place of those specified under the conditions set forth in these conditions and in Section 01630 of Division 1.

(S) 3.4.2.2 By making requests for substitutions based on Subparagraph 3.4.2.1, the Contractor:

- .1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- .2 represents that the Contractor will provide the same warranty or better for the substitution than that specified;
- .3 certifies that the cost data presented is complete and includes all related costs under this contract except the Architect's redesign costs, (See (S) Article 13.5.7) and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- .4 will coordinate the installation of the accepted substitute, making such changes as may be required for the work to be complete in all respects.

(S) 3.4.4 This project shall be a merit shop project open to both union and non-union contractors. Work stoppages will not be tolerated. Any work stoppage will be grounds for termination of this contract.

(S) 3.5.1 Delete the second sentence of this paragraph and replace it with the following: The Contractor represents and warrants to the Owner that the Work required by the Contract Document including without limitations, construction means, methods, procedures and techniques necessary to perform the Work, use of materials, selection of equipment and requirements of product manufacturers are and shall be consistent with: (a) good and sound practices within the construction industry; (b) generally prevailing and accepted industry standards applicable to the Work; (c) requirements of any warranties applicable to the Work; and (d) all laws, ordinances, regulations rules and order which bear upon the Contractor's performance of the work subject to Section 3.7.3. Work not conforming to these requirements, including substitutions not properly approved and authorized, will be considered defective, and promptly after notification of non-conformance shall be repaired or replaced by Contractor with Work conforming to the requirements of the contract Documents.

(S) 3.5.2 The Contractor agrees to assign to the Owner at the time of the final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

(S) 3.6.1.1 (Taxes): Bidders shall inform themselves of tax laws, regulations, interpretations and their application to this project.

(S) 3.6.1.2 Contractors and subcontractors are required to submit to the State of Minnesota Department of Revenue a completed IC-134 form which is a Certificate of Compliance with Minnesota Statutes 290.92 and 290.97. Contractor shall also submit and attach to Form IC-134 the following:

- 1) List of all subcontractors and their addresses
- 2) Completed and certified Form IC-134 from each subcontractor.

Contractor shall send copy of the above required information to the Architect. Final settlement of contract cannot be made until this has been done and accepted.

(S) 3.7.1.1 Contractor is responsible for obtaining and paying for building permit including plan check fee and all other permits, surcharges, portion of permits, storm water management fee, fees, licenses, hook-up charges, notices, reviews, and inspections on this project. Prior to bidding, Contractor shall contact all Code Authorities having jurisdiction on this project to determine the permit and fee costs to the Contractor for this project.

(S) 3.8.2.2 Add the following to the end of Clause 3.8.2.2: "except when installation is specified as part of the allowance in the General Requirements (Division 1 of Specifications)."

(S) 3.9.1.1 Unless Owner agrees otherwise, superintendent that starts project shall remain as superintendent throughout entire project. Provide name to Architect prior to construction for review by Owner.

(S) 3.10.1 In the first sentence after the word "information" insert the words "and acceptance the" and delete the word "a". Add the following to the end of Clause 3.10.1: "Description of form for Progress Schedule defined under Article 3.10 of General Conditions shall be found under Division 1."

(S) 3.10.5 In the event the Owner in its reasonable judgment determines that the performance of the Work has not progressed or reached the level of completion required by the contract Documents, the Owner shall have the right to order the contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (a) working additional shifts or overtime; (b) supplying additional manpower, equipment, and facilities, and (c) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies in the Owner's reasonable judgment with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

(S) 3.10.5.1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Subsection 3.10.5.

(S) 3.10.6 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. Any postponement, rescheduling, or performance of the Work under this Subparagraph may be grounds for an extension of the Contract Time, if permitted under Subsection 8.3.1, and an equitable adjustment in the Contract Sum if (a) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the contracts Documents, and (b) such rescheduling or postponement is required for the convenience of the Owner.

(S) 3.11 Documents and Samples at the Site

(S) 3.12.1.1 Each contractor shall submit to Architect for review a list of all manufacturers' brand names and products, together with supplier's name and location. Submit list within 14 calendar days after award of contract.

(S) 3.12.5.1 Submittals received by the Architect and apparently not reviewed or stamped by the Contractor will be returned to Contractor for review prior to resubmittal to Architect.

(S) 3.14.3 Altering or cutting of structural members will not be allowed without written approval of the Architect.

(SS) 3.18.1 "To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless Owner, Architect, and Architect's consultants and the agents, officers, members, partners, employees, directors of any of them, from and against claims, damages, losses, costs, economic losses and expenses, including but not limited to attorney's fees and litigation costs ("Losses") arising out of or resulting from the Contractor's performance of the work, provided that such Losses are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, excluding the proportionate amount of any Losses, which are caused by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph. This Article shall survive the termination or completion of this Agreement."

(S) 3.18.3 The Contractor's indemnity obligations under Section 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with, any (a) violation of or a failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the contractor, a Subcontractor, or any person or entity for whom either is responsible subject to subsection 3.7.3, (b) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (c) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

(S) 3.18.4 The Contractor shall indemnify and hold harmless all of the Indemnitees from and against any costs and expenses (including reasonable attorney's fees) incurred by any of the Indemnitees in enforcing any of the Contract's defense, indemnity and hold-harmless obligations under this Contract.

-Article 4: Administration of the Contract

Add the following to the end of paragraph 4.2.2:

No approval by the Architect of the Work shall relieve Contractor from the responsibility to perform the Work in a workmanlike manner, free from defects and strictly in conformance with the Contract Documents, nor shall such an approval relieve Contractor from any liability arising out of Work not performed in a workmanlike manner, free from defects and strictly in conformance with the Contract Documents.

Add the following to the end of paragraph 4.2.4:

Any direct communications between the Owner and the Contractor that affect the performance or administration of the Work shall be made or confirmed in writing with copies to the Architect and Owner's representative.

Delete paragraph 4.3.1.

In paragraph 4.3.2, delete the last sentence in the paragraph and insert following the word "later;" provided, however, that the claimant shall use its best efforts to furnish the Architect and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the Architect and the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim. Claims must be initiated by written notice to the Architect and the other party. Claims may also be reserved in writing within the time limits set forth in this Subsection. If a Claim is reserved, the Resolution of Claims and Disputes procedures described in Section 4.4 shall not commence until a written notice from the claimant is received by the Architect. Any notice of Claim of reservation of Claim must clearly identify the alleged cause and the nature of the Claim and include data and information then available to the claimant that will facilitate prompt verification and evaluation of the Claim.

In paragraph 4.3.4, change the number 21, the second time it appears in the paragraph, to the number 10 and add the following on to the end of the paragraph:

No adjustment in the Contact Time or Contact Sum shall be permitted, however, in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or, subject to subsection 3.7.3, that reasonably should have been disclosed by the contractor's prior visual inspections (or other types of inspections if specified in the specifications), tests, reviews and preconstruction services for the Project.

Add new paragraph:

(S) 4.5.4 Limitation on Consolidation or Joinder. Mediation shall include, by consolidation or joinder or in any other manner, all parties including the Owner, Contractor, a separate contractor as described in Article 6, a Subcontractor and other persons substantially involved in the dispute to be mediated. Consent to mediation involving an additional person or entity shall not constitute consent to mediation of a Claim not described therein or with a person or entity not named or described therein. The foregoing agreement to mediate shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

Change heading to read as follows:

(S) 4.6 LEGAL PROCEEDINGS

Change paragraph to read as follows:

(S) 4.6.1 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5, shall, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to legal proceedings venued in Olmsted County, Minnesota. Prior to legal proceedings, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Section 4.5.

Delete the following paragraphs:
4.6.3, 4.6.4, 4.6.5, and 4.6.6.

-Article 5: Subcontractors

(S) 5.4.2 Replace the paragraph with the following:

If the Work in connection with a subcontract has been suspended for more than 30 days after termination of the Contract by the Owner pursuant to Section 14.2 and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for an increase in direct costs incurred by such Subcontractor as a result of the suspension.

Add the following paragraph:

(S) 5.4.3 Each subcontract shall specifically provide that upon assignment as provided for in subsection 5.4.1, the Owner shall only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

-Article 6: Construction By Owner or By Separate Contractors

Delete Subparagraph 6.1.3 and substitute the following:

(S) 6.1.3 Owner will not provide for coordination of each separate contractor with Work of the Contractor. The Contractor shall cooperate with them and shall endeavor to coordinate the Work with them and Owner. See (S) 3.3.2.1.

(S) 6.2.3 Insert the word "not" in the second sentence after the word shall.

-Article 7: Changes in the Work

(S) 7.1.3 Add the following onto the end of the existing paragraph:

Except as permitted in Sections 4.3, 4.4, 4.5, 4.6, 7.3 and subsection 9.7.2, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, unless a written notice of a Claim has been made pursuant to Article 4, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by an alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

(S) 7.3.6 In the first sentence, delete the words "a reasonable allowance for overhead and profit" and substitute "an allowance for overhead and profit in accordance with Subparagraph 7.3.10 and its sub-subparagraphs below."

Add Subparagraph 7.3.10:

(S) 7.3.10 In Subparagraph 7.3.6, the allowance for the combined overhead and profit cost included as part of total costs to the Owner shall be as indicated below:

- .1 Percentage added to Contractor's costs for overhead and profit shall not exceed 10%, except as noted below in 7.3.10.2. Percentage allowed in 7.3.10.1 shall not be added to 7.3.10.2 or the reverse.
- .2 Percentage added to Contractor's costs for prime subcontractors' (combined single contract) costs, for overhead and profit, shall not exceed 5% when the change exceeds \$2,000 and 10% when change is less than \$2,000.
- .3 Cost to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.6. (.1-.5)
- .4 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor and materials. Labor and materials and subcontract costs shall be itemized in the manner prescribed above.
- .5 Submit itemized cost breakdown using format agreed upon between Architect and Contractor.

-Article 8: Time

(S) 8.2.1.1 Completion Time

Work shall begin promptly after the "Notice of Award" has been issued, work shall be substantially completed on or before October 27, 2006. Completion time shall be considered maximum allowed and project shall be fully completed on or before the above date. Should progress permit completion at an earlier date, all contractors and subcontractors are under obligation to proceed with their work at such a pace that progress is not impeded and all work under their contracts will be completed within the contract time.

(S) 8.2.1.2 The completion time is maximum allowed. If Contractor feels completion time is unsatisfactory, send a written objection to Architect prior to addendum deadline, so it may be included in an addendum if Architect feels extension of time is warranted. Should the progress permit completion at an earlier date, all contractors and subcontractors are under obligation to proceed with their work at such a pace that progress is not impeded and all work under their contracts will be completed within the contract time.

(S) 8.2.1.3 If the Work is not substantially complete at completion date established in contract documents, further payments will be withheld until work is fully complete as allowed in Article 9.5.

(S) 8.2.1.4 Article 8.2 does not exclude authorized extensions of time as provided in Article 8.3.

(S) 8.3.1 After word mediation, delete the words "and arbitration". Insert the words "and Owner" between the words "Architect" and the word "determines". Delete the last nine words in the paragraph and add the following onto the end of the paragraph:

"to the extent such delay extends the then current schedule and the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (a) is not caused, or could not have been reasonably avoided, by the Contractor, (b) could not be reasonably limited or avoided by the Contractor's timely notice to the Owner of the delay or reasonable likelihood that a delay will occur, and (c) is of a duration not less than one day."

(S) 8.3.1.1 If the Owner and/or his consultants incur additional costs due to delays in project completion as a result of the contractor or his subcontractor or suppliers, the Owner will deduct such additional costs from the contract amount.

-Article 9: Payments and Completion

(S) 9.2.1.1 The Schedule of Values as described in Article 9.2.1 of General Conditions shall be submitted in quadruplicate to the Architect for checking and review.

(S) 9.3.1.3 Applications for Payment

Applications for Payment as described in Article 9.3 of General Conditions shall be made for not more than 95% of the application so at least 5% of contract price will remain unpaid at date of Owner's acceptance of the project as substantially complete.

(S) 9.3.1.4 Remaining retainage will be paid 30 days after Substantial Completion of project, providing all work is fully complete. If not substantially completed within specified contract time, further payments will be held until Substantial Completion.

Add the following paragraph:

(S) 9.3.3.1 The Contractor further expressly undertakes to defend the Owner, at the Contractor's sole expense, against any actions, lawsuits, or proceedings brought against the Owner as a result of liens filed against the Work, Project site and any improvements thereon for Work for which the Contractor has been paid. The Contractor hereby agrees to indemnify and hold the Indemnitees harmless against any such liens and agrees to pay any judgment or lien resulting from any such actions, lawsuits, or proceedings for Work for which the Contractor has been paid.

Add the following paragraph:

(S) 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (a) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (b) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

(S) 9.8.1 Add the following onto the end of the paragraph:

...use; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all temporary certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project, unless the Owner's failure to obtain these documents is not due to acts or omissions for which the contractor is not responsible.

(S) 9.8.2.1 Should the Contractor not complete the items on the list of work to complete accompanying the Certificate of Substantial Completion within 60 days (or other designated time period), the cost to the Owner for the Architect's additional labor and expenses from that point on as invoiced to the Owner shall be deducted from the Owner's final payment to the Contractor.

(S) 9.8.5 Modify the last sentence as follows: Delete the words "adjusted for" and insert the following before the word "Work": reduced by the product of 150% multiplied by the cost estimated by Owner of completing or correcting.

(S) 9.10.1 Add the following onto the end of the paragraph.

All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Architect as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees have been received and accepted by the Owner.

-Article 10: Protection of Persons and Property

(S) 10.2.3.1 Contractor shall maintain exitways from occupied spaces and not impair egress routes through new and remodeled portions of project. Do not block or lock exit doors in such a manner that may prevent egress. Keep exitways clear of materials. Provide level exiting floor surface to prevent accidents in case of emergency egress from exitways.

(S) 10.2.4.1 When hazardous materials or equipment or unusual construction methods are necessary, Contractor shall give Owner and A/E written advance notice before introduction on the project.

(S) 10.3.1 Change paragraph before the phrase "...or polychlorinated..." to read as follows: If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a concealed and undisclosed hazardous material or substance (as defined in the Federal Regulations), including but not limited to asbestos, lead based paint, petroleum or a constituent thereof...

-Article 11: Insurance and Bonds

Insert (S) 11.1.a before 11.1.1.

(S) 11.1.a Contractor shall purchase and maintain at least the minimum insurance and bond coverage as required by Owner, as given in "Owner's Instructions for Insurance and Bonds", included in project manual after Conditions of the Contract. This does not limit Contractor from acquiring additional insurance as indicated in 11.1.1.

(S) 11.1.1.1 Delete semicolon at end of Clause 11.1.1.1; add "including private entities performing work at site and exempt from coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at same limits specified for mandatory coverage for duration of project;"

(S) 11.1.1.2 Delete semicolon at end of Clause 11.1.1.2 and add: "or persons or entities excluded by statute from requirements of Clause 11.1.1.1 but required by Contract Documents to provide the insurance required by that Clause;"

(S) 11.1.1.8.1 In addition to coverage required in 11.1.1, Contractor shall provide and maintain protection as required by (S) Article 3.18.1.1. Coverage shall be as indicated in Owner's Insurance Form.

(S) 11.1.1.9 The Owner and the Architect shall be listed as additional insured on the project insurance coverage. The Owner shall be the certificate holder.

(S) 11.1.1.10 The Owner shall require in any Agreement it makes with a Contractor for the Project that the Contractor shall obtain Commercial General Liability Insurance with contractual liability coverage insuring the obligation of the Contractor. The Contractor shall name the Owner, the Architect and their employees, and other consultants and their employees as additional insured of that policy. The additional insured endorsement shall state that (1) the coverage afforded the additional insured shall be primary insurance for the additional insured with respect to claims arising out of operations performed by or on behalf of the Contractor, (2) if the additional insureds have other insurance which is applicable to the loss, such other insurance shall be executed only on any excess or contingent basis; and (3) the amount of the insurer's liability under the insurance policy shall not be reduced by the existence of other insurance by the additional insureds.

(S) 11.1.2.1 The Contractor shall be responsible for payment of all deductibles relating to a paid claim at no additional cost to the Owner.

(S) 11.1.3 Add the following onto the end of this paragraph:
The Owner, Owner's Representative, and Architect shall be named as additional insureds on the liabilities policies required by Section 11.1.

(S) 11.1.3.1 Acceptable insurance certificate forms are listed in Section 01300.

(S) 11.4 Property Insurance

(S) 11.4.1 In the first line of the first sentence, delete the word "Owner" and insert the word "Contractor".

(S) 11.4.1.1 Add the following onto the end of the paragraph.
Property insurance provided by the Contractor shall not cover any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring, and other similar items commonly referred to as construction equipment that may be the site and the capital value of which is not included in the Work. The Contractor shall make its own arrangements for any insurance it may require on such construction equipment. Any such policy obtained by the Contractor under this subsection shall include a waiver of subrogation in accordance with the requirements of Subsection 11.4.7.

(S) 11.4.1.1.1 Add the following paragraph: If by terms of this insurance mandatory deductibles are required, Contractor shall be responsible for payment of such mandatory deductibles in event of a paid claim. Should Owner elect to increase any mandatory deductibles or purchase deductibles not otherwise required, Owner shall be responsible for payment of such additional deductible amounts.

(S) 11.4.1.3 Substitute the word "Contractor" for the word "Owner" where it appears in this sentence.

Delete 11.4.1.4 and substitute the following:

(S) 11.4.1.4 Owner will not provide insurance coverage for work either stored off site or in transit. Contractor shall provide insurance coverage for portions of work stored off site and in transit until incorporation into the work. Before proceeding with insurance coverage for work stored off site or in transit, Contractor shall provide substantiating evidence of existence of the work, its value and location, unmistakable identification of the work, and full and proper insurance coverage. Owner will then approve, in writing to Contractor, the insurance coverage proposed by the Contractor.

Add the following Clause 11.4.1.4.1 to Subparagraph 11.4.1:

(S) 11.4.1.4.1 The insurance required is not intended to cover machinery, tools, or equipment owned or rented by the Contractor which are utilized in the performance of the Work and not incorporated into the permanent improvements. The Contractor shall, at Contractor's own expense, provide insurance coverage for owned or rented machinery, tools, or equipment which shall be subject to the provisions of Subparagraph 11.4.7.

(S) 11.4.1.5 Modify this paragraph by inserting the following:
"which consent shall not be unreasonably withheld" after the word "otherwise" in the first sentence.

(S) 11.4.4 This paragraph shall read as follows:
If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Contractor shall, if possible, include such insurance.

(S) 11.4.6 Wherever in this paragraph the word "Owner" may appear, change it to "Contractor".
Wherever the word "Contractor" appeared change it to "Owner".

(S) 11.4.7 The first sentence shall read as follows:
The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent of actual recovery of any insurance proceeds under any property insurance obtained pursuant to this Section 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner in good faith.

(S) 11.4.8 Modify the first sentence as follows:
Replace the word "Owner's" with the word "Contractor's" and wherever the phrase "as fiduciary" appears in the sentence, replace it with "in good faith".

(S) 11.4.9 Whenever phrase "as fiduciary" appear in this paragraph, replace it with the phrase "in good faith".

(S) 11.4.10 Delete the last two sentences in the paragraph. Whenever phrase "as fiduciary" appear in this paragraph, replace it with the phrase "in good faith".

(S) 11.5.1.1 Delete the last eight words in Paragraph 11.5.1 and replace with the following:
Contractor shall provide Performance Bond and Payment Bond for 100% of the contract amount.
Bond form shall be AIA A312.

(S) 11.5.1.2 Bonds shall be obtained from a reputable bonding company lawfully authorized to do business in the jurisdiction in which the project is located. Cost of bonds shall be included in the contract sum.

(S) 11.5.1.3 Contractor shall deliver required bonds to Owner no later than 3 days following the date Agreement is entered into, or if the work is to be commenced prior thereto in response to a letter of intent, Contractor shall, prior to commencement of work, submit evidence satisfactory to Owner that such bonds will be furnished. Bonds shall remain in force until at least 12 months after date of Substantial Completion.

(S) 11.5.1.4 No payments will be made to Contractor until bonds have been provided and accepted by the Owner.

(S) 11.5.1.5 Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the Surety to affix thereto a certified and current copy of the power of attorney.

(S) 11.5.3 Bonds furnished by the Contractor must name the Owner's lender, if any, as an additional obligee.

(S) 11.5.4 Upon the request of any person or entity appearing to be a potential beneficiary of any of the bonds required under Section 11.5, the Contractor promptly shall furnish a copy of the bonds or shall permit a copy thereof to be made and delivered to such persons or entity.

(S) 11.5.5 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of a Power of Attorney.

(S) GENERAL REQUIREMENTS

(S) 11.6.1 If the Owner or the Contractor is damaged by the failure of the other party to purchase or maintain insurance required under Article 11, then the party who failed to purchase or maintain the insurance shall bear all reasonable costs (including attorneys' fees, and court and settlement expenses) properly attributable thereto.

(S) 11.6.2 This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements or representations, oral or written, not contained within this Agreement.

-Article 12: Uncovering and Correction of Work

(S) 12.2.1.1 Add the following to the end of the paragraph:

If prior to the date of Substantial Completion the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work (other than start-up), including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner.

-Article 13: Miscellaneous Provisions

Add (S) 13.1.1.1 All electrical equipment provided on this project shall have been inspected and shall be currently listed by an approved testing laboratory acceptable to local governing authorities. Such labs include AGA, ARL, ETL, MET, and UL.

(S) 13.5.3 Add the following to the end of the paragraph:

The Contractor also agrees that the cost of the testing services required for the convenience of the Contractor in his scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work, shall be borne by the Contractor.

Add (S) 13.5.7 The Contractor shall reimburse the Owner for services provided by the Architect in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to Drawings, Specifications and other documentation resulting therefrom.

(S) 13.7.1 Delete this and .1, .2, and .3.

Add the following Paragraph 13.8 to Article 13:

(S) 13.8 Equal Opportunity

(S) 13.8.1 The Contractor shall maintain policies of employment as follows:

- .1 Contractor and Contractor's subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination.
- .2 Contractor and Contractor's subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.

(S) 13.8 GENERAL PROVISIONS

(S) 13.8.1 Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating

or affecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed severable.

-Article 14: Termination or Suspension of the Contract

(S) 14.1.3 Delete the last six words at the end of the paragraph.

(S) 14.2.1 Add the following Paragraphs .5, .6 and .7 to Article 14:

.5 becomes insolvent, files a Petition in Bankruptcy, or is adjudicated bankrupt, makes a general assignment to the benefit of its creditors, or cannot pay its debts as they generally become due; or

.6 suspends its business operations or otherwise fails to operate its business in the ordinary course.

(S) 14.2.1.7 Has a work stoppage due to a disagreement between union and non-union workers.

(S) 14.2.2 In the first sentence delete the words following the word "Owner" where it appears for the first time, until the phrase "...may without...".

(S) 14.2.4 Insert the words in the first sentence as follows:

After word "damages" insert phrase "and costs" and after "Owner" insert the phrase "in furnishing the Work".

(S) 14.4.3 Delete the sentence and replace it with the following:

Upon such termination, the Contractor shall recover as its sole remedy payment including fee for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions and proven costs of termination for the Contractor such as, for example, restocking charges, noncancelable material purchase orders, and reasonable overhead and profit on Work not executed, provided the Project is completed by others within the adjusted date for Final Completion. The Contractor hereby waives and forfeits all claims for payment and damages, including, without limitation, anticipated profits. The Owner shall be credited for (a) payments, previously made to the Contractor for the terminated portion of the Work, (b) claims that the Owner has against the Contractor under the Contract, and (c) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum.

-THE END-



RESOLUTION

BE IT RESOLVED by the Public Utility Board to approve a purchase order agreement with Surety Waterproofing Company for

Silver Lake Plant Partial Masonry Restoration
As Defined in the Specification

The amount of the agreement to be FIFTY-NINE THOUSAND THREE HUNDRED THIRTY AND NO/100 (\$59,330.00), and Surety Waterproofing Company being lowest responsible bidder.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 26th day of September, 2006.

President

Secretary