

Resolution

Board of

Ramsey County Commissioners

Presented By: Commissioner Bennett Date: February 7, 2012 No. 2012-048

Attention: County Manager's Office

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WHEREAS, On November 15, 2011, the Ramsey County Board of Commissioners approved an Offer to Purchase ("OTP") from the United States Government 430 acres of property on the former Twin Cities Army Ammunitions Plant ("TCAAP") property in Arden Hills for a purchase price of \$28,500,000, less offsets; and

WHEREAS, The OTP was transmitted to the General Services Administration ("GSA") on December 28, 2011, the date on which all exhibits to the OTP were approved as to form and content by the County Attorney's Office; and

WHEREAS, The OTP establishes a 60 day negotiation period for the County and the GSA to reach agreement on the dollar value of offsets (credits) outlined in the OTP; and

WHEREAS, To establish the dollar value of these credits, the Board authorized the County Manager to issue a Requests for Proposals ("RFP") for a fixed fee contract for hazardous material abatement, demolition and site remediation on the property; and

WHEREAS, An RFP was issued on November 23, 2011; and

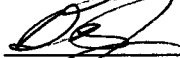
WHEREAS, Two proposals were received on January 18, 2012, that were evaluated by an Evaluation Team in accordance with the RFP process; and

WHEREAS, The Evaluation Team unanimously recommends award of a contract to Carl Bolander & Sons Co. for a fixed fee of \$20,660,000; Now, Therefore, Be It

Ramsey County Board of Commissioners

	YEA	NAY	OTHER
Tony Bennett	X		
Toni Carter		X	
Jim McDonough	X		
Jan Parker	X		
Victoria Reinhardt		X	
Janice Rettman		X	
Rafael Ortega	X		

Rafael E. Ortega, Chair

By: 
Bonnie C. Jackelen
Chief Clerk - County Board

Resolution

Board of

Ramsey County Commissioners

Presented By: Commissioner Bennett Date: February 7, 2012 No. 2012-048

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RESOLVED, The Ramsey County Board of Commissioners approves the Agreement Between Ramsey County and Carl Bolander & Sons Co., 251 Starkey Street, St. Paul, MN 55107, for hazardous material abatement, demolition, and site remediation at the former Twin Cities Army Ammunitions Plant in the amount of a fixed fee of \$20,660,000; and Be It Further

RESOLVED, The Ramsey County Board of Commissioners authorizes the Chair and Chief Clerk to execute the Agreement; and Be It Further

RESOLVED, That authorization to proceed to closing under the Offer to Purchase of former Twin City Army Ammunition Plant property under Resolution No. 2011-330 and issuance of the Notice to Proceed under this Agreement are subject to approval by the Board.

Ramsey County Board of Commissioners

	YEA	NAY	OTHER
Tony Bennett	X		
Toni Carter		X	
Jim McDonough	X		
Jan Parker	X		
Victoria Reinhardt		X	
Janice Rettman		X	
Rafael Ortega	X		

Rafael E. Ortega, Chair

By: 
Bonnie C. Jackelen
Chief Clerk - County Board

**Agreement between Ramsey County and Carl Bolander & Sons Co.
For Hazardous Material Abatement, Demolition and Site Remediation—Former Twin
Cities Army Ammunition Plant**

This is an Agreement between Ramsey County, Minnesota, a political subdivision of the State of Minnesota, Suite 220 City Hall/Court House, 15 West Kellogg Boulevard, St. Paul, MN 55102 (“County”) and Carl Bolander & Sons Co., 251 Starkey Street, St. Paul, MN 55107 (“Contractor”).

WHEREAS, on November 23, 2011, the County issued a Request for Proposals (“RFP”) #ATTY1152-3 for hazardous material abatement, demolition and site remediation services on a portion of the former Twin Cities Army Ammunition Plant or “TCAAP” (“Site”) in Arden Hills, Minnesota, and subsequently issued Addenda 1-4 to the RFP (the RFP and Addenda 1-4 are collectively referred to hereafter as the “County RFP”), attached hereto and made a part of this Agreement as **Exhibit A-County RFP**; and

WHEREAS, the Contractor submitted a proposal dated January 18, 2012, in response to the County RFP (“Contractor’s Proposal”), attached hereto and made a part of this Agreement as **Exhibit B-Contractor’s Proposal**; and

WHEREAS, using the evaluation criteria set forth in the RFP, and based on the written proposals received in response to the RFP and other documents submitted at the request of the County, the County has determined that the Contractor’s proposal best meets the County’s needs;

Now, therefore, based upon the above Recitals, which are incorporated in and made part of this Agreement, and in return for the good and valuable consideration described in this Agreement, the County and the Contractor agree as follows:

1. Term of Agreement. This Agreement is effective on the date of the last signature below (“Effective Date”) and will remain in effect until all obligations set forth in this Agreement have been satisfactorily fulfilled, or the Agreement has been terminated, whichever occurs first. The Contractor shall have a continuing obligation, after said agreement period, to comply with any provision of this Agreement intended for the County’s protection or benefit, or that by its sense and context, is intended to survive the completion, expiration or termination of this Agreement. **THE CONTRACTOR UNDERSTANDS THAT NO WORK SHALL BEGIN UNDER THIS AGREEMENT UNTIL ALL REQUIRED SIGNATURES ON THIS AGREEMENT HAVE BEEN OBTAINED AND THE COUNTY HAS ISSUED A NOTICE TO PROCEED IN ACCORDANCE WITH SECTION 5.a OF THIS AGREEMENT. ANY WORK PERFORMED BY THE CONTRACTOR PRIOR TO SUCH TIME WILL BE CONSIDERED AS HAVING BEEN PERFORMED AT THE CONTRACTOR’S OWN RISK AND AS A VOLUNTEER.**

2. Scope of Work.

a. The Contractor shall provide all of the labor, materials, equipment, and services necessary to complete all of the Tasks set forth in **Exhibit C-Scope of Work**, attached hereto and made a part of this Agreement. The Contractor understands that time is of the essence in this

Agreement and agrees to complete the Scope of Work in accordance with the Project Timeline set forth in Section 5. of this Agreement.

b. Additional Services. The County has not included in the Scope of Work under this Agreement any of the Contingency Tasks described in **Exhibit D-Contingency Tasks**, attached hereto and made a part of this Agreement. However, the County reserves the right to add one or more of the Contingency Tasks to the project Scope of Work during the term of this Agreement, at its discretion. The addition of any Contingency Tasks shall be made by execution of a Change Order by the parties using the task descriptions set forth in **Exhibit D-Contingency Tasks** and the pricing set forth in Section 3. herein.

3. Consideration and Terms of Payment. The consideration for all labor, materials, equipment, and services performed or supplied by the Contractor under this Agreement will be paid by the County as follows:

a. Contract Sum. The County's total obligation ("Contract Sum"), including compensation for all services and reimbursable expenses for all of the Tasks set forth in **Exhibit C-Scope of Work** is \$20,660,000.00. The Contractor acknowledges that there will be no increase in the Contract Sum, regardless of unforeseen circumstances, changed conditions or excused delays except items listed under "EXCLUDED TASKS" in **Exhibit C-Scope of Work**.

b. Prices for Contingency Tasks. If the County elects to include any of the tasks described in **Exhibit D-Contingency Tasks** in the Scope of Work, the following prices shall apply:

Contingency Task 1: \$1,985,000.00/lump sum
Contingency Task 2: \$75/linear foot
Contingency Task 3 (Unit 3): \$10,000.00/well
Contingency Task 3 (Unit 4): \$23,000.00/well
Contingency Task 4: \$319,000.00/lump sum
Contingency Task 5: \$23,000.00/lump sum

c. If the County gives the Contractor notice under Section 5.b. of its intent to negotiate, the Contractor agrees to maintain the pricing set forth in this Agreement through September 30, 2012.

d. Frequency and Content of Invoicing. The Contractor shall submit invoices to the County on a bi-monthly basis. Each invoice shall describe the work performed, time expended, costs incurred, and materials incorporated into the Project for the time period covered by the invoice. The Contractor, in its invoices, shall allocate all costs to the applicable Task(s) listed in **Exhibit C-Scope of Work** or any subsequent Change Order.

e. Terms of Payment. The County will make payment within 30 days of receipt of an invoice consistent with the provisions of this Agreement, provided that at no time shall cumulative payments exceed the percentage project completion as determined by the County. The County may withhold payment in whole or in part for work found by the County to be defective, untimely, unsatisfactory, or otherwise not conforming to this Agreement, or not in accordance with all applicable federal, state, and local laws, ordinances, rules and regulations.

f. Payment of interest on late payments and disputes regarding payments shall be governed by the provisions of Minn. Stat. Section 471.425.

4. Project Team.

a. The Contractor shall provide personnel at all times that shall have sufficient capacity, skill and experience to perform its obligations under this Agreement, including the key personnel listed in **Exhibit B-Contractor's Proposal**.

b. The Contractor is responsible for the timeliness and quality of its work and the work of its subcontractors.

c. The initial subcontractors selected by the Contractor and approved by the County are Wenck Associates, Inc., Pace Analytical Services, Inc., and Diane Short & Associates. The key personnel listed in **Exhibit B-Contractor's Proposal** and the approved subcontractors identified in this Section 4.c are hereafter collectively referred to as the "Project Team".

d. The Contractor may, from time to time upon reasonable prior written notice to the County, make changes to the Project Team by discharge, addition or substitution, provided any change to the Project Team shall be subject to the County's prior approval.

5. Project Timeline.

a. The Contractor may not commence work under this Agreement until receipt of a Notice to Proceed from the County, which shall be given no later than September 30, 2012. Failure of the County to give a Notice to Proceed to the Contractor by this deadline shall constitute a release of both parties from their obligations under this Agreement and an immediate termination of this Agreement, except as otherwise provided in Section 5.b. herein.

b. In the event that funding for all of the tasks set forth in **Exhibit C-Scope of Work** is not made available to the County by September 30, 2012, the County may, in its sole discretion, elect to negotiate with the Contractor a modification to this Agreement for completion of some of the Tasks identified in **Exhibit C-Scope of Work** and/or **Exhibit D-Contingency Tasks**. Upon giving such notice, the automatic termination provision set forth in Section 5.a. shall be suspended. Any agreement for modification of the terms of this Agreement as a result of the change in scope shall be made by execution of a Change Order by the parties no later than September 30, 2012. Failure of the parties to reach agreement by September 30, 2012, shall constitute a release of both parties from their obligations under this Agreement and an immediate termination of this Agreement.

c. Within 60 calendar days from the date of the Notice to Proceed, the Contractor will develop a Project Schedule and Plan showing completion of all tasks as described in this Agreement consistent with the time limitations set forth in this Agreement, which plan will be subject to review and approval by the County.

d. The Contractor will obtain approval from the Minnesota Pollution Control Agency ("MPCA"), with concurrence from the U.S. Environmental Protection Agency ("EPA"), of a Response Action Plan ("RAP") for the area marked "Stadium Footprint Area" on **Exhibit E-**

Site Map to this Agreement within 180 calendar days of the date of the Notice to Proceed and shall fully implement the RAP for the Stadium Footprint Area and obtain approval of a report documenting the implementation of the RAP from the MPCA, with concurrence from the U.S. EPA, within 270 calendar days of the date of the Notice to Proceed.

e. All Tasks identified in **Exhibit C-Scope of Work** must be completed within 30 months of the date of the Notice to Proceed.

6. Liquidated Damages.

a. Time is of the essence in the performance of the Tasks identified in **Exhibit C-Scope of Work**.

b. The purpose of liquidated damages is to ensure adherence to the deadlines in the Project Timeline set forth in Section 5. of this Agreement for completing the Tasks identified in **Exhibit C-Scope of Work**.

c. The Contractor agrees that in the event of its inexcusable failure to meet a deadline set forth in the Project Timeline, the County may deduct from the Contract Sum to be paid to the Contractor \$5,000 for each calendar day of inexcusable delay.

d. For purposes of this Section, a delay in performing a Task identified in **Exhibit C-Scope of Work** by a deadline provided in the Project Timeline is excusable where the delay results from the occurrence of conditions beyond the Contractor's control; provided, however, that an excusable delay shall not result in any increase in the Contract Sum to be paid to the Contractor.

7. Independent Contractor. It is agreed that nothing contained in this Agreement is intended or should be construed as creating the relationship of agents, partners, joint venturers, or associates between the parties hereto or as constituting the Contractor as the employee of the County for any purpose or in any manner whatsoever. The Contractor is an independent contractor and neither it, its employees, agents, subcontractors, nor representatives are employees of the County. From any amounts due the Contractor, there will be no deductions for federal income tax or FICA payments, nor for any state income tax, nor for any other purposes which are associated with an employer-employee relationship unless required by law. Payment of federal income tax, FICA payments, and state income tax are the responsibility of the Contractor.

8. Indemnification. With respect to the "response actions" to be completed by the Contractor at the Site under this Agreement, the Contractor is performing the function of a "response action contractor" as is set forth in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 *et seq.*, as amended ("CERCLA") and pursuant to the Environmental Response and Liability Act of the Minnesota Statutes, M.S.A. §115B.03, *et seq.* The Contractor recognizes that neither the federal government nor the County is holding harmless or indemnifying the Contractor pursuant to CERCLA, 42 U.S.C. 9619(c). Subject to the foregoing, 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 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, its officials, agents or employees, in the execution, performance, or failure to adequately perform the Contractor's obligations pursuant to this Agreement.

9. Insurance and Bonds.

a. Contractor Insurance

- 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 any one of them may be liable.

- 2) The Contractor shall secure the following coverages and comply with all provisions noted. Certificates of Insurance shall be issued evidencing such coverage to the County from and including the date of the Notice to Proceed through the balance of the term of this Agreement.
 - 2.1) Commercial General Liability Insurance
 - 2.1.1) Per Occurrence Limit: \$1,000,000
General Aggregate Limit (per project): \$2,000,000
Products/completed operations total limit: \$2,000,000
Personal injury and advertising: \$1,000,000
 - 2.1.2) There shall be no provision limiting coverage for explosion, collapse or underground property damage.
 - 2.1.3) All policies shall be written on an occurrence basis using ISO form CG 00 01 or the equivalent.
 - 2.1.4) Ramsey County, the United States Army, and the United States Government, their officials, employees, and agents, shall be added to the policy as additional insureds on a primary basis with respect to the ongoing and completed operations of the Contractor, using ISO endorsement forms CG 20 10 and CG 20 37 or equivalents.
 - 2.1.5) Products and completed operations coverage shall be provided for five years after final payment.
 - 2.2) Automobile Insurance
 - 2.2.1) Coverage shall be provided for hired, non-owned and owned auto.
 - 2.2.2) \$1,000,000 combined single limit.

- 2.3) Workers' Compensation and Employer's Liability
 - 2.3.1) Workers' Compensation as required by Minnesota Statute
 - 2.3.2) Employer's Liability Limits:
\$500,000/\$500,000/\$500,000
- 2.4) Umbrella Liability
 - 2.4.1) \$10,000,000 per occurrence
\$10,000,000 general aggregate
 - 2.4.2) Ramsey County, the United States Army, and the United States Government, their officials, employees, and agents, shall be an additional insured as required under the Commercial Umbrella Liability policy.
 - 2.4.3) The policy will provide excess coverage over the commercial general liability and automobile liability policies.
- 2.5) Pollution Liability
 - 2.5.1) Coverage includes but is not limited to:
 - a. bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;
 - b. property damage including physical injury to or destruction of tangible property and the resulting loss of use thereof; loss of use of tangible property that has not been physically injured or destroyed; diminution in value; and Natural Resource Damages;
 - c. clean-up costs (including restoration/replacement costs);
 - d. defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages;
 - e. transported cargo (First and Third Party Carriers);
 - f. Non-Owned Disposal Sites (blanket basis).
 - 2.5.2) Coverage shall apply to both sudden and gradual pollution conditions, including the further disruption of pre-existing conditions, arising from the services rendered by the Contractor or others on its behalf. Further, coverage shall apply to conditions on, at, under and emanating from the Site including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, structures

thereupon, the atmosphere or any watercourse or body of water, which results in any loss or damages defined above. Coverage shall not contain any lead based paint, asbestos, or mold restrictions nor any "Insured vs. Insured" exclusions preventing the County, and other owner stakeholders, from bringing a claim against the Contractor.

2.5.3) Should coverage be written on a Claims-Made basis, the Contractor will maintain insurance (as described above) on a continuous basis for not less than thirty-six (36) months beyond the termination of the agreement. At the County's sole discretion the Contractor may be required to purchase a longer Extended Reporting Period at the Contractor's expense.

2.5.4) The Contractor shall maintain limits no less than:
\$5,000,000 per pollution condition/\$10,000,000 annual aggregate.
Any self-insured retention or deductible amount on the policy shall not reduce the amount of collectible limits of liability.

2.5.5) The Contractor's Pollution Liability policy is to contain, or be endorsed to contain, the following provisions:

1. The County, its subsidiaries, officials and employees are to be covered as additional insureds as respects to liability arising out of activities performed by or on behalf of the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the County, its subsidiaries, officials and employees.

2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the County, its subsidiaries, officials and employees. Any insurance or self-insurance maintained by the County, its subsidiaries, officials and employees shall be excess of the Contractor's and shall not contribute with it.

3. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Misrepresentation, concealment, breach of a term or condition, or violation of any duty under the policy by the Contractor will not prejudice the interest of coverage for the County.

4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, materially reduced in coverage or in limits except after

thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the County.

2.5.6) The Contractor shall furnish the County with copies of the original endorsements effecting the coverage required by this specification. A certificate of insurance is also required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the County before work commences. As an alternative to the County's certification forms, the Contractor's insurer may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

2.6) Professional Liability/Errors and Omissions Coverage

2.6.1) \$10,000,000 per claim
\$10,000,000 aggregate

2.6.2) All policies shall be written as acceptable to the County.

2.6.3) Certificate of Insurance must indicate if the policy is issued on a claims-made or occurrence basis. If coverage is carried on a claims-made basis, then: 1) the retroactive date shall be noted on the Certificate and shall be prior to or the day of the inception of this Agreement; and 2) evidence of coverage shall be provided for five years beyond expiration of this Agreement.

2.7) Property Insurance

The Contractor will be responsible for any loss or damage to materials, equipment, or products used for the project and to any other property owned by the contractor, subcontractors, or suppliers.

The County and the Contractor waive all rights (1) against each other and any of their subcontractors of any tier, agents and employees, each of the other, and (2) separate contractors, if any, and any of their subcontractors of any tier, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Agreement or other property insurance applicable to the Work. The Contractor shall require from its subcontractors of any tier similar waivers each in favor of the parties enumerated herein. 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.

- 2.8) Where the contract requires work to be performed on or near 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 Contract Sum.
- 3) All Certificates of Insurance shall provide that the insurance company gives the Contractor thirty (30) days prior written notice of cancellation, or non-renewal of such policy. The Contractor will in turn notify the County.
- 4) The above paragraphs establish minimum insurance requirements, and it is the sole responsibility of the Contractor to purchase and maintain additional insurance that may be necessary in connection with this Agreement.
- 5) Certificates of Insurance must indicate if the policies are issued pursuant to these requirements. The County will not issue a Notice to Proceed until the Contractor has obtained the required insurance and filed an acceptable Certificate of Insurance with the County. Copies of insurance policies to which the County has been named an Additional Insured shall be submitted to the County upon request.
- 6) Nothing in this Agreement shall constitute a waiver by the County of any statutory or common law immunities, limits, or exceptions on liability.
- 7) Certificates shall specifically indicate if the policy is written with an admitted or non-admitted carrier. Best's Rating for the insurer(s) shall be noted on the certificate, and shall be no less than an A.

b. County Insurance.

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

c. Contractor's Bonds.

- 1) The Contractor shall furnish bonds as described below, covering the faithful performance of this Agreement and the payments of all obligations arising thereunder. The Notice to Proceed will not be issued until the County has received the proper bonds specified under this Article, issued by a bonding company licensed to do business in Minnesota, and 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. All bonds signed by an agent must be accompanied by a certified copy of the authority to act.
- 2) The performance and payment bonds shall each be in the amount of 100% of the Contract Sum.

- 3) Duly executed, notarized and updated Acknowledgments of both the Principal and Surety and the Surety's Power of Attorney must be attached to each of the two required bonds.
 - 4) 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 proposer submission date.
- d. The Contractor must submit bonds and certificates of insurance that comply with the above provisions upon request of the County prior to issuance of the Notice to Proceed.

10. Warranty. The Contractor expressly warrants and guarantees that the services provided under this Agreement will be of professional standards of care and quality. The Contractor further represents that all services provided under this Agreement: (i) comply with the warranties and representations expressed by the Contractor orally or in any written advertisement, correspondence, response to the County's RFP, or other document provided to or in the possession of the County; (ii) comply with all applicable laws, codes and regulations (including any published by any national or statewide association or groups); and (iii) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. Professional Services will be performed with the skill, diligence and quality a recognized and followed in the marketplace for a professional engineering, construction, and consulting firm performing services of a similar nature, during the same time, and in the same geographic area. If any of the foregoing warranties are breached, the Contractor agrees to correct all defects and nonconformities at the Contractor's sole expense, to be liable for all direct damages suffered by the County and any other persons, and to defend, indemnify, and hold harmless the County and its elected officials, employees, and agents from any claim asserted by any person resulting in whole or in part from such breach. The Warranty Period is not to exceed 1 year after Substantial Completion.

11. Non-Conforming Services. The acceptance by the County of any non-conforming 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.

12. 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 this Agreement 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.

13. Unavailability of Funding. The purchase of 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 from the Board of County Commissioners. The County may immediately terminate this Agreement if the funding for services is no longer available or is not appropriated by the Board of County Commissioners. Upon receipt of the County's notice of termination of the Agreement the Contractor shall take all actions necessary to discontinue further commitments of funds to the Agreement. Termination shall be treated as termination without cause and will not result in any penalty or expense to the County. In the event funding is terminated after the Notice to Proceed has been issued, and the Contractor has started under the Scope of Work, the Contractor shall be entitled to payment for work performed up to and including the termination date including demobilization from the site.

14. Subcontractor Payment. 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.

15. Limitation on County Liability. IN NO EVENT WILL THE COUNTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, LOST PROFITS OR LIKE EXPECTANCY DAMAGES ARISING OUT OF THE AGREEMENT. THE COUNTY'S MAXIMUM OBLIGATION UNDER THIS AGREEMENT WILL NOT EXCEED THE CONTRACT SUM SET FORTH IN SECTION 3.a.

16. Compliance with Applicable Law. The Contractor agrees to comply with all federal, state and local laws or ordinances, and all applicable rules, regulations, and standards established by any agency of such governmental units, which are now or hereafter promulgated insofar as they relate to the Contractor's performance of the provisions of this Agreement. It shall be the obligation of the Contractor to apply for, pay for and obtain all permits and/or licenses required by any governmental agency for the provision of those services contemplated herein.

17. Audit. Until the expiration of 6 years after the furnishing of services pursuant to this Agreement, the Contractor, upon written request, shall make available to the County, the State Auditor or the County's ultimate funding sources, a copy of this Agreement and the books, documents, records and accounting procedures and practices of the Contractor relating to this Agreement.

18. Termination.

a. With Cause. The County reserves the right to suspend or terminate this Agreement if the Contractor violates any of the terms or conditions of this Agreement or does not fulfill in a timely and proper manner its obligations under this Agreement as determined by the County. In the event that the County exercises its right of suspension or termination under this Section, it shall submit written notice to the Contractor, specifying the extent of such suspension or

termination under this Section, the reasons therefore, and the date upon which such suspension or termination becomes effective. Upon receipt of such notice, the Contractor shall take all actions necessary to discontinue further commitments of funds to the extent that they relate to the suspended or terminated portions of this Agreement.

- b. **Without Cause.** The County may terminate this Agreement without cause and for any reason whatsoever upon giving at least 30 days written notice thereof to the Contractor. In such event, the Contractor shall be entitled to receive compensation for the services provided in a satisfactory manner up to and including the effective date of termination.
- c. Failure of the State of Minnesota ("State") to appropriate funding for the project and/or rejection of the County's Offer to Purchase by the federal government ("Government") and/or rescission of the Government's acceptance of the County's Offer to Purchase shall be cause for immediate termination of this Agreement. Notice of such termination shall be given in accordance with the provisions of Section 20. herein.
- d. Failure of the County to give a Notice to Proceed to the Contractor by September 30, 2012, shall constitute a release of both parties from their obligations under this Agreement and an immediate termination of this Agreement without further action by the County, except as otherwise provided in Section 5.b. herein.

19. Conflict of Interest. The Contractor affirms that, to the best of the Contractor's knowledge, the Contractor's involvement in this Agreement does not result in a conflict of interest with any party or entity which may be affected by the terms of this Agreement. The Contractor agrees that, should any conflict or potential conflict of interest become known to the Contractor, the Contractor will immediately notify the County of the conflict or potential conflict, specifying the part of this Agreement giving rise to the conflict or potential conflict, and will advise the County whether the Contractor will or will not resign from the other engagement or representation.

20. Notices/Administration. Except as otherwise provided in this Agreement, all required notices under the terms of this Agreement shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other party at its address set forth below or to such other address as such party may designate by notice given pursuant to this section:

If to County:

Ramsey County
Attention: Gregory Mack, Director
Parks and Recreation Department
2015 Van Dyke Street

If to Contractor:

Carl Bolander & Sons, Co.
Attention: Mark R. Ryan, President
251 Starkey

Maplewood, MN 55109-3796
Fax: 651-748-2508
E-mail: greg.mack@co.ramsey.mn.us

St. Paul, MN 55107
Fax: 651-223-8197
Email: mark@bolander.com

21. Equal Employment Opportunity. The Contractor agrees to comply with all federal, state and local laws, resolutions, ordinances, rules, regulations and executive orders pertaining to unlawful discrimination on account of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, sexual orientation, disability, or age. When required by law or requested by the County, the Contractor shall furnish a written affirmative action plan.

22. Workforce Diversity. The Contractor shall make good faith efforts throughout the term of this Agreement, and any extensions thereof, to employ persons of color for all classifications of work under this Agreement, and shall, when requested by the County, submit a written report to the County regarding the efforts and results of such efforts, including employment by job classification.

23. Prevailing Wage. The Contractor and all subcontractors shall conform to the labor laws of the State of Minnesota, 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 the unions have jurisdiction and the local prevailing rate for those classifications of work in the localities over which the unions do not have jurisdiction. For purposes of this agreement, the terms "prevailing wage", "minimum wage rate per hour", and "prevailing rate" 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.

24. Respectful Workplace and Violence Prevention. The Contractor shall make all reasonable efforts to ensure that the Contractor's employees, officials and subcontractors do not engage in violence while performing under this Agreement. Violence, as defined in the Ramsey County Respectful Workplace and Violence Prevention Policy, means 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.

25. HIPAA Compliance. The Contractor agrees to implement and comply with applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA, Public Law 104-191), as it may be amended from time to time.

26. Contractor Certification Regarding Debarment, Suspension, and Responsibility. Federal Regulation 45 CFR 92.35 prohibits the County from purchasing goods or services with

federal money from vendors who have been suspended or debarred by the federal government. By signing this Agreement, the Contractor certifies that it and its principals:

- a.** Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from transacting business by or with any federal, state or local governmental department or agency; and
- b.** Have not within a three-year period preceding this Agreement:
 1. been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract;
 2. violated any federal or state antitrust statutes; or
 3. committed embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; and
- c.** Are not presently indicted or otherwise criminally or civilly charged by a governmental entity for:
 1. commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction;
 2. violating any federal or state antitrust statutes; or
 3. committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; and
- d.** Have not had one or more public transactions terminated within the preceding three years for cause or default; and
- e.** Shall not knowingly enter into any transaction with a subcontractor who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, and that they will require any subcontractor that receives more than \$100,000 to make a similar certification as set forth herein; and
- f.** Are not aware of any information and possess no knowledge that any subcontractor(s) that will perform work pursuant to this Agreement are in violation of any of the certifications set forth above; and
- g.** Shall immediately give written notice to the County should Contractor come under investigation for allegations of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local government) transaction; violating any federal or state antitrust statutes; or