

**CONTRACT BETWEEN  
CONTRACTOR AND  
CITY OF RAPID CITY**

THIS AGREEMENT, made this 6<sup>th</sup> day of August, 2013, by and between Heavy Constructors DBA Gustafson Builders (Contractor), hereinafter called the Party of the Second Part, and the City of Rapid City, South Dakota, hereinafter called the Party of the First Part, WITNESSETH: That the Party of the Second Part and the Party of the First Part, for the consideration hereinafter named, agree as follows:

**ARTICLE 1. SCOPE OF WORK**

The Party of the Second Part shall furnish all of the materials and labor and perform all of the work as described in the specifications for the project

**Roosevelt Park 50 M Pool  
13-2090/CIP #50948**

prepared by Fennell Design Inc. and shall do everything required by this Contract, Notice, Instructions, Special Conditions, Special Provisions, Detailed Specifications, Detailed Plans, General Conditions, and Standard Specifications which are hereby made a part of the Contract, including the following Addenda:

<u>ADDENDUM NO.</u>	<u>DATED</u>
1	July 17, 2013
2	July 22, 2013
3	July 23, 2013
4	July 24, 2013
5	July 25, 2013
6	July 26, 2013

**ARTICLE 2. TIME OF COMPLETION**

All work shall be completed in accordance with the completion date set forth in Addendum #4. Liquidated damages, as specified on the Bid Form (\$1,300/Day), will be charged for failure to complete the project on or before the completion dates of:

- All components necessary for Pool Operations inclusive of all structures, utilities, pool components, paving & hardscape, and fencing are to be completed by May 1, 2014.
- Soft-scape landscaping and operational irrigation are to be completed by May 22, 2014.

Requests for time extensions shall be made in writing to the Architect as soon as possible before the project completion date. All time extensions will be issued by the Owner through the Architect and will be granted only for good cause beyond the control of the Contract.

**ARTICLE 3. CONTRACT SUM**

The Party of the First Part shall pay the Party of the Second Part for the performance of the Contract, subject to additions and deductions provided therein, in current funds as follows:

Four Million, Two Hundred Twenty-six Thousand Dollars

(\$4,226,000)

- Unit Prices – Modification of the documents-prescribed quantities of installed concrete filled steel piles.
  - Add - more than the prescribed length: Add \$34/Lineal Foot
  - Deduct - less than the prescribed length: Deduct \$11/Lineal Foot

**ARTICLE 4. ACCEPTANCE AND FINAL PAYMENT**

Upon completion of all work under this Contract, the Individual or Department specified in Article 2 for making time extensions shall satisfy himself by examination that the test work has been finally and fully completed in accordance with the Specifications and Contract and report such completion to the Owner. The Contractor must complete and return a proper City voucher, and payment will be made on said voucher as soon as possible after approval by the Council.

**ARTICLE 5. THE CONTRACT DOCUMENTS**

The Notice for Bids, Instructions to Bidders, Proposal, Performance Bond, Insurance, Special Provisions, Special Conditions, Addenda, and the Plans and Specifications, together with this Agreement, form the Contract, and all are as fully a part of the Contract as if hereto attached or herein repeated.

The said Party of the Second Part further agrees and states that he has studied the detailed specifications and that he is familiar with the terms and conditions stipulated therein.

IN WITNESS WHEREOF: The City of Rapid City, South Dakota, Party of the First Part, its Council having duly approved this Contract, has caused this Contract to be executed in its behalf by its Mayor, thereunto duly authorized, attested thereto by its Finance Officer and has hereto attached its corporate seal this 5 day of August, 2013.

THE CITY OF RAPID CITY, SOUTH DAKOTA

BY *Sam Kooker*  
 SAM ~~KOOKER~~, MAYOR *Koosiker*  
 Party of the First Part

ATTEST *Pauline Sumption*  
 PAULINE SUMPTION  
 City Finance Officer

HEAVY CONSTRUCTORS DBA GUSAAFSON BUILDERS  
 NAME OF COMPANY  
 Party of the Second Part

BY DAVID GUSAAFSON  
 NAME OF REPRESENTATIVE  
 Authorized Representative

*David Gusafson*  
 TITLE PRESIDENT

DATE 8-7-13

ADDRESS PO BOX 1376  
RAPID CITY SD 57709

(SEAL)

APPROVED AS TO FORM  
 CITY ATTORNEY'S OFFICE

*Open* *8/14/13*  
 Attorney Date

SECTION 6  
PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we, Heavy Constructors, dba Gustafson Builders as Principal, and Travelers Casualty and Surety Company of America, a SURETY COMPANY with General Offices in Hartford, Connecticut, a Corporation organized under the laws of the State of Connecticut, and authorized to transact business in the State of South Dakota as Surety, are held and firmly bound unto the CITY OF RAPID CITY, SOUTH DAKOTA, in the penal sum of Four Million Two Hundred Twenty-Six (\$ 4,226,000.00), lawful money of the Thousand Dollars United States, in payment of which sum well and truly to be made, the said Principal and Surety bind themselves, their successors, and assigns, jointly and severally, firmly by these presents.

Signed, sealed, and delivered this 7th day of August, 2013, (yyyy).

WHEREAS, said Principal has entered into a written contract with the Obligee dated August 6th, (2013 ) for

**ROOSEVELT PARK 50-METER POOL**  
Rapid City Project #13-2090/CIP#50948

and shall be in accordance with the detailed plans and specifications on file in the offices of the City Finance Officer of said City, a copy of which contract is attached hereto and made a part hereof.

NOW, THEREFORE, if said Principal shall, in all particulars, well, truly, and faithfully perform and abide by said contract and each and every covenant, condition, and part thereof and shall carry out all obligations resting upon said Principal by the terms of said contract, specifications, and detailed plans; and if the said Principal shall pay to said City all sums due or which may become due by the terms of said contract, as well as by reason of any violations thereof by said Principal; and if said Principal shall promptly pay, or cause to be paid, all labor bills, including the hire, rental, or lease of equipment or machinery and the operators thereof used on the work and all bills for materials, lubricants, oils, and gasoline used in or consumed in the construction of such work and for all labor performed in such work, whether by subcontract or otherwise; and if said Principal shall protect and save harmless said City from all loss, damages, and expense to life or property suffered or sustained by any person, firm, or corporation, caused by said Principal or its agents, servants, or employees in the construction of said work; or by or in consequence of any negligence, carelessness, or misconduct in guarding and protecting the same, or from any act or omission of the said Principal or his agents, servants, or employees; and if the said Principal shall protect and save harmless said City from all suits and claims of infringement or alleged infringement of patent rights or processes; and if, for and during a period of two (2) years from and immediately following the completion of said Contract and the acceptance thereof by said City, the said Principal shall pay, or cause to be paid, to said City all damage, loss, and expense which may occur to the said City by reason of defective materials used or by reason of defective workmanship done in the furnishing of materials for and the construction of the said work and compliance with S.D.C.L. 5-21-3 and S.D.C.L. 10-46-5, if applicable; and if said Principal shall

save and hold harmless said City from all damages, loss, and expense occasioned by any failure whatsoever of the said Principal, then this obligation shall be null and void; otherwise to be and remain in full force and effect in law.

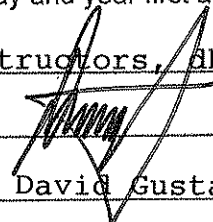
If the Principal shall fail or neglect to pay any person, firm, or corporation for labor bills, including the hire, rental, or lease of equipment or machinery, and the operators thereof, used on the work or materials employed or used by said Principal in carrying forward, performing, and completing said Contract within thirty (30) days after the same becomes due and payable, such persons, firms, or corporations entitled to such pay may sue and recover on this bond form said sureties or either of them the amount so due and unpaid them.

And the said surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the work to be performed thereunder, or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition by the terms of the Contract or to the work or to the specifications.

IN TESTIMONY WHEREOF, the said Principal has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its duly authorized officers and the said Surety has caused these presents to be executed in its name and its corporate seal to be hereunto affixed, by its attorney-in-fact duly authorized thereunto so to do, the day and year first above written.

Heavy Constructors, dba Gustafson Builders

BY: \_\_\_\_\_

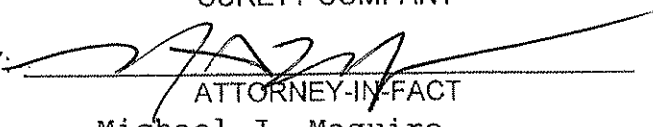


David Gustafson

Travelers Casualty and Surety Company of America  
SURETY COMPANY

(SEAL)

BY: \_\_\_\_\_



ATTORNEY-IN-FACT

Michael J. Maguire

(Accompany this Bond with Attorney-in-fact's authority from the company.)

This Bond and surety approved this 14<sup>th</sup> day of August, 2013. WEN



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 223882

Certificate No. 005181249

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Michael J. Maguire, Daniel P. Maguire, Kevin G. Maguire, and Marilyn J. Larson

of the City of Rapid City, State of South Dakota, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 10th day of September, 2012.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: [Signature]
Robert L. Raney, Senior Vice President

On this the 10th day of September, 2012, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2016.



[Signature]
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

**RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

**FURTHER RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

**FURTHER RESOLVED**, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

**FURTHER RESOLVED**, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 6th day of August, 20 13.

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

*Kevin E. Hughes*  
Kevin E. Hughes, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at [www.travelersbond.com](http://www.travelersbond.com). Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
03/27/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> MARSH USA INC. 600 RENAISSANCE CENTER, SUITE 2100 DETROIT, MI 48243	<b>CONTACT NAME:</b>	<b>FAX (A/C, No):</b>
	<b>PHONE (A/C, No, Ext):</b>	
	<b>E-MAIL ADDRESS:</b>	
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>00310-00310-RAFF-13/14</b>	<b>INSURER A:</b> Zurich American Insurance Company	<b>NAIC #</b> 16535
<b>INSURED</b> Heavy Constructors, Inc. dba: Gustafson Builders Excavating Specialists P.O. Box 3239 Rapid City, SD 57709	<b>INSURER B:</b> American Zurich Insurance Company	40142
	<b>INSURER C:</b> St. Paul Fire & Marine Ins Co	24767
	<b>INSURER D:</b> N/A	N/A
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES**      **CERTIFICATE NUMBER:** CHI-004044801-12      **REVISION NUMBER:** 1

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY	X		GLO3486970	04/01/2013	04/01/2014	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						
	CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC						
A	AUTOMOBILE LIABILITY			BAP3486969	04/01/2013	04/01/2014	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input checked="" type="checkbox"/> ANY AUTO						
	ALL OWNED AUTOS						
	HIRED AUTOS						
	SCHEDULED AUTOS						
	NON-OWNED AUTOS						
C	<input checked="" type="checkbox"/> UMBRELLA LIAB			ZUP-10N31560-13-NF	04/01/2013	04/01/2014	EACH OCCURRENCE \$ 15,000,000 AGGREGATE \$ 15,000,000
	EXCESS LIAB						
	DED						
	RETENTION \$						
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			WC3486968	04/01/2013	04/01/2014	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)		Y/N <input checked="" type="checkbox"/> N				E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
CERTIFICATE HOLDER IS NAMED AS ADDITIONAL INSURED FOR GENERAL LIABILITY ONLY, BUT ONLY AS RESPECTS LIABILITY ARISING FROM THE OPERATIONS OF THE INSURED AND WHERE REQUIRED BY WRITTEN CONTRACT. WORKERS' COMPENSATION DOES NOT APPLY TO MONOPOLISTIC STATES (ND, OH, WA AND WY), PUERTO RICO OR THE VIRGIN ISLANDS.

<b>CERTIFICATE HOLDER</b>  City of Rapid City 300 Sixth Street Rapid City, SD 57701	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE of Marsh USA Inc. John C Hurley
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