License No.



# LICENSE AGREEMENT - UTILITIES

**THIS LICENSE AGREEMENT** (the “**Agreement**”) is entered into effective as of the date of last signature below by and between Regents of the University of Minnesota through its Real Estate Office (the “**University**”), a Minnesota constitutional corporation, and      , a       (the “**Licensee**”).

**1.** **Grant of License.**

1.1 University grants to Licensee a non-exclusive, revocable license to install, operate, maintain, and repair       (“**Utilities**”) over, under, and upon, as applicable, a strip of real property 10 feet wide, bounded by a line five feet on both sides of a line approximately shown and identified on Exhibit A (the “**Property**”) for a 50 year term beginning on       (the “**Commencement Date**”), and ending 50 years thereafter. The initial installation of the Utilities shall be completed as promptly as reasonably possible and in no event more than       days after commencement of the initial installation.

1.2 Licensee and its contractors and consultants may enter onto the Property for the purposes of this Agreement only after License notifies University’s Facilities Management Call Center at (612) 624-2900 at least twenty-four (24) hours prior to each day of access. If Licensee’s work will require the temporary closing of sidewalks, bike paths or lanes, streets or roads, or will otherwise disrupt pedestrian, cycle or vehicular traffic, or will affect on-street or off-street parking on University property, Licensee will submit a proposed work schedule and traffic control plan that will route vehicles, bicyclists and pedestrians safely around the work zone to University for review and approval, which approval shall not be unreasonably withheld, at least seven working days prior to the anticipated date(s) of the closing. Licensee shall also obtain, in advance, any approvals required from governmental authorities for any such temporary closings. Notwithstanding the foregoing, Licensee may enter onto the Property without advance notice in the event of an emergency.

1.3 This Agreement is subject to: (a) any and all existing restrictions, covenants, easements, licenses, permits, leases and other encumbrances relating to the Property; and (b) all applicable federal, state, and local laws, statutes, regulations, ordinances, rules, and requirements.

1.4 Licensee accepts all rights granted under this Agreement in an “AS IS” and “WITH ALL FAULTS” condition, and subject to all limitations on University’s rights, interests, and title to the Property.

1.5 Licensee represents that it has inspected the Property and enters into this Agreement with knowledge of their condition. Licensee shall determine the suitability of the Property for its intended use, including without limitation geotechnical, structural, environmental, and health or safety conditions. Licensee acknowledges that this Agreement does not contain any implied warranties that Licensee or Licensee’s contractors or consultants can successfully install, operate, maintain, or repair the Utilities.

**2. Fee.** The non-refundable fee for this license is $     .

**3. Termination.**

3.1 This Agreement is terminable upon reasonable written notice by University to Licensee for any reason. University may also upon reasonable written notice to Licensee require that the Utilities be relocated, at Licensee’s sole cost and expense, to a mutually agreeable location (and if no agreement is reached, then the Agreement will terminate).

3.2 Upon the expiration or earlier termination of this Agreement, Licensee, at its sole cost and expense, shall at University’s request promptly remove its Utilities and repair any damage to the Property resulting therefrom.

**4. Use of the Property.**

4.1 Licensee agrees to access and use the Property solely for the purpose stated in Section 1.1. Only Licensee and consultants and contractors retained by Licensee may enter upon and use the Property under this Agreement.

4.2 University shall have the right, in its sole discretion, to require Licensee to submit to University, for its prior review and approval, detailed plans and specifications describing Licensee’s proposed work on the Property.

4.3 Licensee shall perform all rights granted herein in a safe and good and worker-like manner, in accordance with all applicable federal, state, and local laws, statutes, regulations, ordinances, rules, and requirements.

4.4 Promptly after completion of construction, installation, maintenance or repair work, Licensee, at its sole cost and expense, shall (i) remove all equipment and other property placed upon the Property by Licensee or its contractors or consultants, (ii) remove all debris resulting therefrom; and (iii) restore the Property, including adjacent streets, curbing, irrigation and landscaping, to the condition that existed prior to commencement of Licensee’s work; or at University's option, Licensee shall upon demand reimburse the University for any cost incurred by University in restoring such damage; and (iv) furnish to University without charge electronic copies in electronic source map data in .dwg AutoCAD and .PDF formats of "as-built" drawings and specifications for any part of the Utilities located under the surface of the Property.  Restoration of streets and curbing, if any, shall be coordinated in advance with       at 612-      or      @[umn.edu](http://umn.edu/) and completed in a manner reasonably acceptable to University’s Parking & Transportation Services. Restoration of landscaping shall be in accordance with University’s Landcare Requirements attached as Exhibit B to this Agreement, coordinated in advance with Tom Ritzer at 612-624-8225 or [ritze001@umn.edu](mailto:ritze001@umn.edu), and completed in a manner reasonably acceptable to University Landcare.  All restoration must be completed no later than 30 days after the end of the work. If Licensee’s obligations in this paragraph are not completed within 30 days after the end of the work, University shall have the right, but not the obligation, to perform them and Licensee agrees to reimburse University for its costs incurred in doing so upon receipt of an invoice.

4.5 Licensee, at its sole cost and expense, shall promptly restore to University’s reasonable satisfaction any damage to the Property or University’s other property arising from or related to Licensee’s use of the Property; or at University’s option, Licensee shall upon demand reimburse the University for any costs incurred by University in restoring such damage.

4.6 Licensee, at its sole cost and expense, shall maintain its Utilities in a good, safe condition and repair.

4.7 Licensee shall keep the Property free of any and all mechanics’, material supplier’s, and other liens arising out of any work, labor done, services performed, or materials furnished for Licensee or its contractors or consultants or claimed to have been furnished for Licensee or its contractors or consultants.

4.8 The University reserves the right to access, occupy and use, and grant others the right to access, occupy and use, the Property for any purpose whatsoever provided that such use does not unreasonably interfere with the Utilities. Licensee agrees not to disturb University’s use and enjoyment of the Property.

4.9 Licensee shall provide to University electronic copies of any test results and reports it or its contractors or consultants obtain pertaining to the Property. All test results and reports shall be sent to the University of Minnesota, Real Estate Office, 451 Donhowe Building, 319 15th Avenue Southeast, Minneapolis, MN 55455-0199, prior to submission to any regulatory agency. University may comment separately on said results and reports to any regulatory agency, but shall not alter any submission from Licensee to any regulatory agency.

**5. Environmental.**

5.1 Licensee shall not -- and shall ensure that others do not -- install, use, generate, store, locate, produce, process, treat, transport, incorporate, discharge, emit, release, deposit, or dispose of Hazardous Substances in, upon, under, over or from the Property in violation of any current or future federal, state, or local law, statute, regulation, ordinance, rule, code, or order relating to human health or the environment (“Environmental Regulation”). Hazardous Substance means (i) any substance defined as a hazardous substance under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or the Minnesota Environmental Response and Liability Act; (ii) petroleum, petroleum products and by-products, natural gas, natural gas liquids, liquefied natural gas, and synthetic gas; and (iii) any other substance or material now or in the future deemed to be hazardous, dangerous, toxic, or a pollutant or contaminant under any Environmental Regulation. Licensee shall indemnify, defend and hold harmless the University from and against any claim, damage or expense arising out of Licensee’s breach of the foregoing obligations and covenants.

5.2 Licensee, at its sole cost and expense, shall:

5.2.1 Notify University prior to any activity on the Property which involves the use, storage, generation, treatment, transportation, release, disposal, or handling of any Hazardous Substance;

5.2.2 Comply with all Environmental Laws governing the use, storage, generation, treatment, transportation, release, disposal, or handling of Hazardous Substances;

5.2.3 Immediately stop construction or any other activity if Licensee encounters a Hazardous Substance;

5.2.4 Give immediate notice to University’s Department of Environmental Health and Safety at 612-626-6002 or, after normal business hours, the Police Department dispatch at 612-624-2677 (i) if Licensee encounters a Hazardous Substance; (ii) if a Hazardous Substance is spilled or released on or from the Property; (iii) of a violation of any Environmental Laws; (iv) of an inspection or inquiry by any governmental agency with respect to Licensee’s use of the Property; or (v) if Licensee receives any notice from any governmental agency alleging that any Environmental Laws have been violated by Licensee with respect to Licensee’s use of the Property;

5.2.5 Promptly perform any investigative, remedial or other activities necessary to avoid or minimize injury or liability to any person, or to prevent the spread of contamination; and

5.2.6 Promptly respond to and comply with any notice, order, request, or demand relating to potential or actual contamination on the Property.

5.3 If during installation, maintenance, repair or other work, Licensee or its contractors or consultants expose or disturb soils, water, or other materials that appear to be contaminated based on visual and olfactory observation and/or field screening activities, Licensee shall test the soils, water, and other materials at Licensee’s cost; testing shall be conducted by a certified laboratory. While the soils, water, and other materials are being tested, all potentially contaminated soils and other materials shall be stored on ten (10) mil poly and covered appropriately until testing is complete. Water shall be stored and labeled, if necessary, in an approved storage vessel. Stored soils, water, and other materials shall be appropriately secured on-site, and are the responsibility of the Licensee.

5.3.1 If testing confirms -- or any agency with jurisdiction thereof determines -- that the soils, water, or other materials are contaminated, Licensee shall dispose of them appropriately at an approved facility and/or via an approved MCES or MPCA Discharge Permit at Licensee’s sole cost. Licensee shall assume full responsibility for impacted soil, water, and all other materials excavated and removed from the Property. Licensee shall (a) seek and receive from a State and/or country approved disposal facility(ies) written pre-approval for receipt of impacted materials; and (b) provide such pre-approval to University. Licensee shall provide to University without charge copies of all test results and documentation regarding analysis and disposal of impacted soil, water, and materials removed from the Property, including, but not be limited to, waste manifests, bills of lading, chain of custody documents and landfill/disposal facility receipt records. If identified releases are detected on the Property and the site is entered into the MPCA's Voluntary Investigation and Clean-up Program (VIC) and/or the Petroleum Brownfields Program (PB), Licensee shall ensure that University is named as Successors or Assigns to any statutory liability assurance letter received from MPCA.

5.3.2 If testing determines that the soils, water, or other materials are not contaminated, Licensee may with University’s prior written consent dispose of them on the Property in accordance with existing MPCA Guidelines.

5.4 If University has reason to believe that a Hazardous Substance has been discharged, spilt, or released on the Property by Licensee or its contractors or consultants, then University has the right, but not the obligation, to require Licensee, at Licensee’s sole cost and expense, to perform an environmental audit by an environmental consultant satisfactory to University. Such an investigation shall be commenced within ten (10) days after University’s request, and thereafter be diligently prosecuted to completion. Licensee shall provide to University an electronic copy of the environmental audit immediately after it is completed.

5.5 If Licensee fails to perform its obligations under this Section, the University shall have the right, but not the obligation, to perform Licensee’s obligations and charge Licensee for the costs and expenses reasonably incurred by University in doing so. Licensee shall reimburse the University for all such costs and expenses within ten (10) days after receipt of an invoice.

5.6 Licensee hereby authorizes any and all governmental entities with responsibility for enforcement of Environmental Regulation to release to University (or provide University with access to) all files related to alleged violations of Environmental Regulation at the Property.

**6. Insurance.**

6.1 Licensee shall maintain, and shall ensure that its contractors and consultants maintain, the following insurance:

6.1.1 Commercial General Liability covering claims arising from operations under this Agreement, whether such operations are performed by Licensee or its contractors or consultants, with minimum limits of $5,000,000 per occurrence, $5,000,000 annual general aggregate per project, and $5,000,000 annual aggregate for Products/Completed Operations. The general aggregate limit shall apply per project and be maintained for at least three years after construction is complete. Regents of the University of Minnesota shall be named as an additional insured for ongoing and completed operations by endorsement on ISO forms CG 2010 07 04 and CG 2037 07 04 or their equivalent for claims arising out of the acts or omissions of Licensee, its contractors’ or consultants’, and anyone else for whom Licensee is responsible.

6.1.2 Business Automobile Liability Insurance with a minimum Combined Single Limit of $5,000,000 each accident for bodily injury and property damage. Coverage shall apply to all owned, hired, and non-owed automobiles. Regents of the University of Minnesota shall be named as an additional insured.

6.1.3 Workers’ compensation insurance in compliance with all statutory requirements of the State of Minnesota.

6.1.4 Employer’s Liability insurance with minimum limits of $5,000,000 bodily injury by disease per employee; $5,000,000 bodily injury by disease aggregate; and $5,000,000 bodily injury by accident.

6.1.5 Pollution liability insurance with minimum limits of $2,000,000 per claim or occurrence and $2,000,000 aggregate limit. Covered damages shall include bodily injury, property damage, environmental damage, loss of use of property, governmental ordered cleanup costs, completed operations and defense including costs, charges, and expenses incurred in the investigation, adjustment, or defense of claims or damages.

6.1.6 An Umbrella or Excess Liability insurance policy may be used to supplement Licensee’s policy limit to satisfy the minimum policy limits required by this Agreement. If these policies are not follow-form of the underlying coverage, the coverage shall, at a minimum, provide the coverage available on the underlying policies.

6.2 Insurance Conditions.

6.2.1 All policies shall provide: (i) that the policy will not be canceled or non-renewed without at least 30 days’ prior written notice to University; and (ii) that the policy is primary and any insurance maintained by University is excess and non-contributory. All policies shall be written by a reputable insurance company acceptable to University with a current AM Best Rating of A-VII or better, and authorized to do business in Minnesota.

6.2.2 Licensee shall waive and require all contractors and consultants of every tier to waive all subrogation and recovery rights against University.

6.2.3 Licensee shall provide to University prior to commencing any work on the Property fully executed Certificates of Insurance evidencing that it has obtained the required coverage and endorsements. At University’s option, Licensee shall provide to University certified copies of insurance policies and all endorsements substantiating maintenance of the insurance required by this Agreement.

6.2.4 Licensee shall impose the same or, at its election, more stringent requirements on its contractors and consultants performing work on the Property.

6.2.5 Ten years after the Commencement Date and at 10-year intervals thereafter so long as the Agreement remains in force, the minimum limits of insurance set forth herein may be reasonably increased by University.

**7. Taxes; Fees.** Licensee shall pay when due all taxes, assessments, and governmental charges levied or assessed upon the Utilities and all taxes, assessments, and governmental charges levied or assessed against the Property or University to the extent attributable to the Utilities.

**8. Default.** If at any time Licensee fails to perform its obligations under this Agreement, University, in its sole discretion, may: (i) seek specific performance of the unperformed obligations; (ii) perform Licensee’s obligations and charge Licensee for its costs reasonably incurred in doing so; or (iii) terminate this Agreement. Licensee shall promptly reimburse University for costs the University incurs under this Section.

**9. Notices.** A notice, communication, or demand by either party to the other shall be sufficiently given or delivered upon receipt if personally delivered or three days after sent by U.S. registered mail or certified mail, postage prepaid, return receipt requested; and is addressed to or delivered personally to:

If to University: Regents of the University of Minnesota

Attn: Real Estate Office

319 15th Avenue SE, Suite 451

Minneapolis MN 55455

Email: reo@umn.edu

With a copy to: University of Minnesota

Office of the General Counsel

Attn: Transactional Law Services Group

360 McNamara Alumni Center

200 Oak Street SE

Minneapolis, MN 55455-2006

Facsimile No.: (612) 626-9624

Email: contracts@mail.ogc.umn.edu

If to Licensee:

Attn:

Email:

or at such other address with respect to either such party as that party may, from time to time, designated in writing.

**10. Liability; Indemnification.** Licensee shall be liable for all loss, damage, or claims resulting from its or its contractor’s and/or consultant’s use of the Property. Licensee shall defend, indemnify and hold harmless University of and from any and all claims, loss, damage, recoveries, judgments, costs or expenses related thereto arising from or in any manner connected with (a) Licensee’s exercise of its rights under this Agreement; (b) any acts or omission of Licensee or its officers, employees, contractors, consultants, agents or any other person(s) or entity(ies) for whose acts or omissions Licensee is legally responsible; or (c) any breach of this Agreement.

**11. Damages.** IN NO EVENT SHALL UNIVERSITY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, LOST PROFITS OR LIKE EXPECTANCY DAMAGES ARISING OUT OF THE AGREEMENT. University’s total liability under this Agreement is the fee payable by LICENSEE as set forth in PARAGRAPH 2.

**12. Miscellaneous.**

12.1 Assignment. Licensee shall not assign its rights under this Agreement without University’s prior written consent, which University may grant, withhold, or condition in its sole discretion.

12.2 License Only. Licensee acknowledges that this Agreement represents a grant of a revocable license only, and not an easement or lease.

12.3 Survival. Notwithstanding anything to the contrary, to the extent applicable, the terms of this Agreement shall survive expiration or termination of the Term.

12.4 Counterparts; Electronic Delivery. This Agreement is executed in any number of counterparts, each of which shall constitute one and the same instrument. The executed counterparts of this Agreement may be delivered by electronic means, such as email and/or facsimile, and the receiving party may rely on the receipt of such executed counterpart as if the original had been received.

12.5 Severability. If any provision of this Agreement is declared invalid, illegal or otherwise unenforceable, that provision shall be deemed to have been severed from this Agreement and the remainder of this Agreement shall otherwise remain in full force and effect.

12.6 Complete Agreement. This Agreement (including all exhibits) constitutes the complete agreement between the parties with respect to the matters addressed herein. This Agreement shall be amended only in a writing duly executed by the parties to this Agreement.

**IN WITNESS WHEREOF**, University and Licensee have executed this Agreement as of the date University has signed this grant of license.

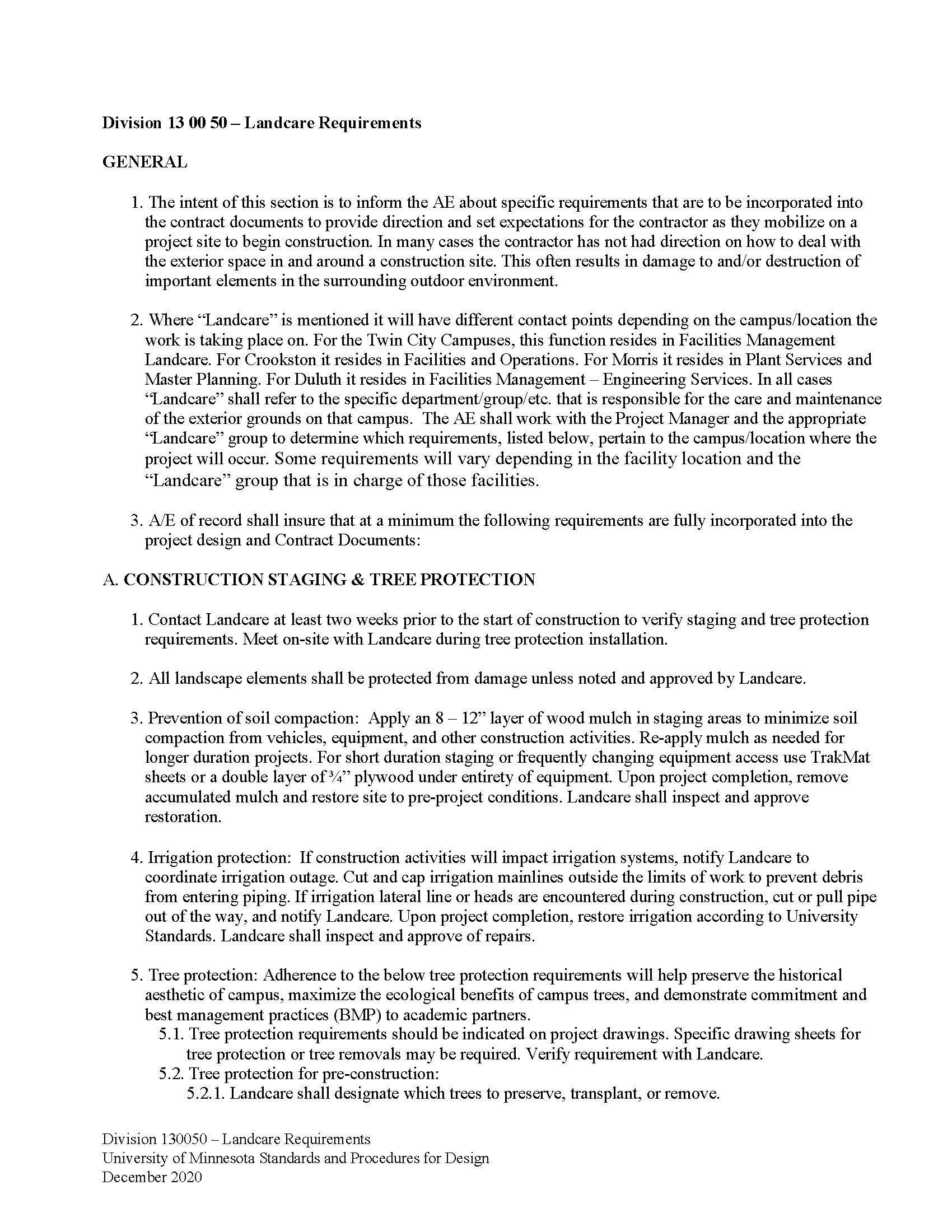
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| **Regents of the University of Minnesota**  By:  Name:  Title:  Date: | By:  Name:  Title:  Date: |

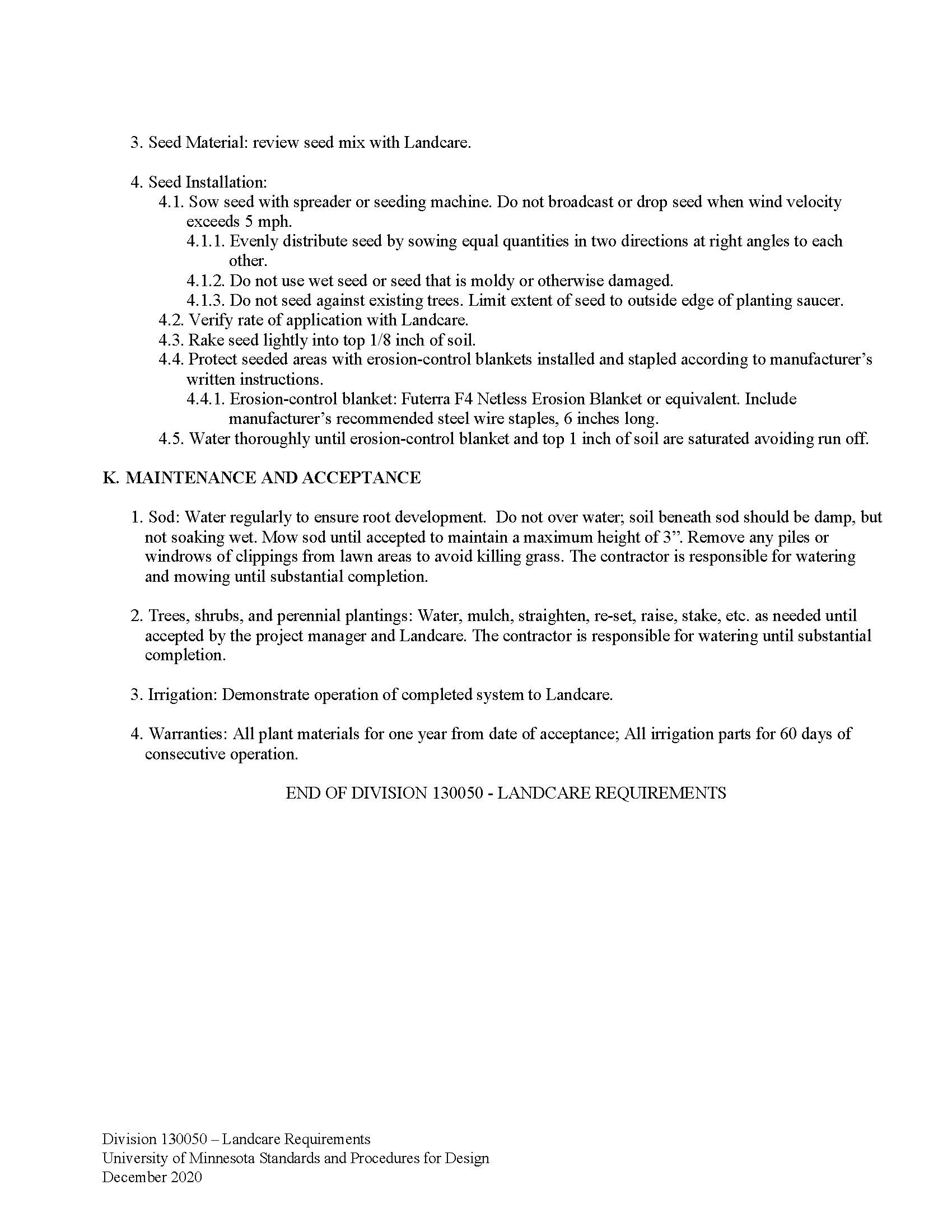
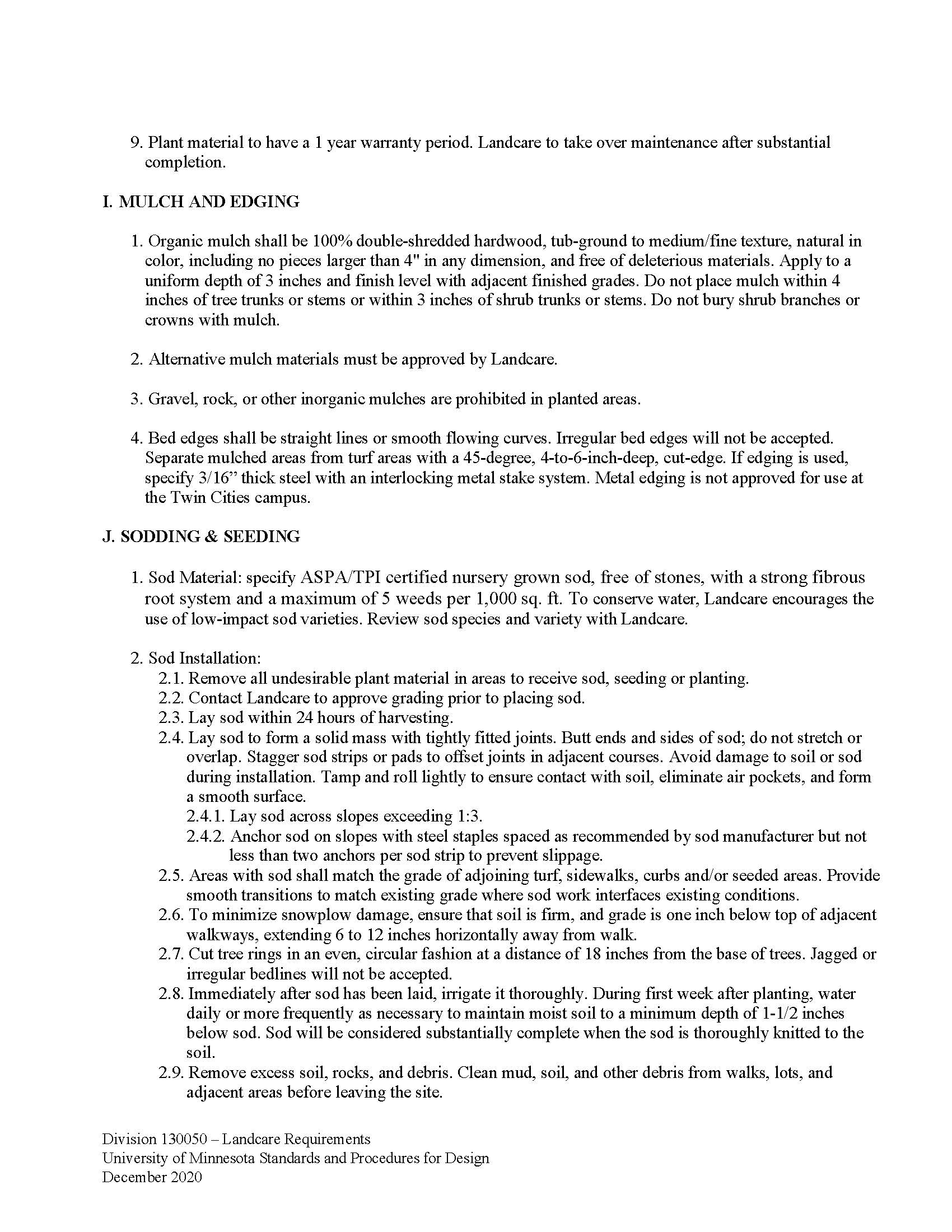
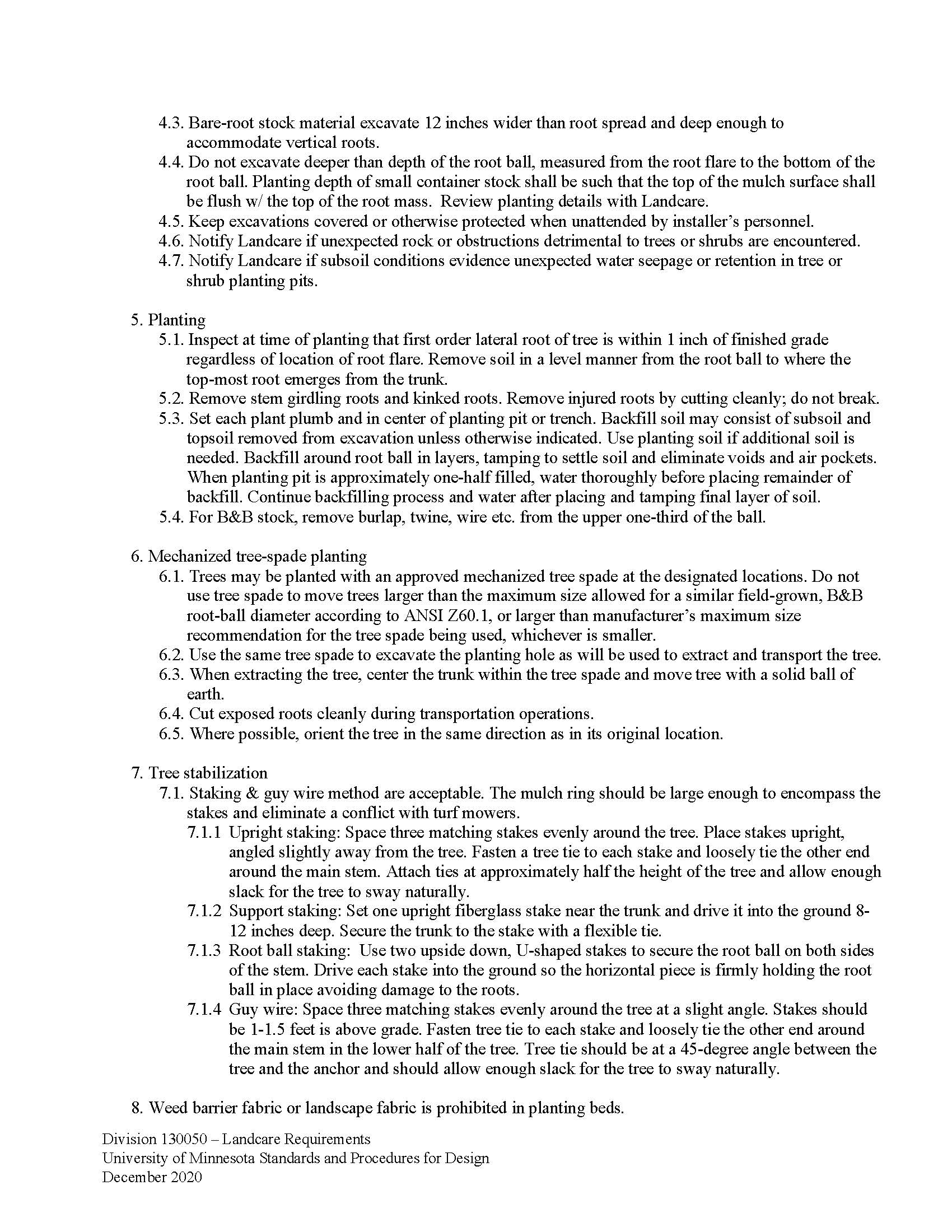
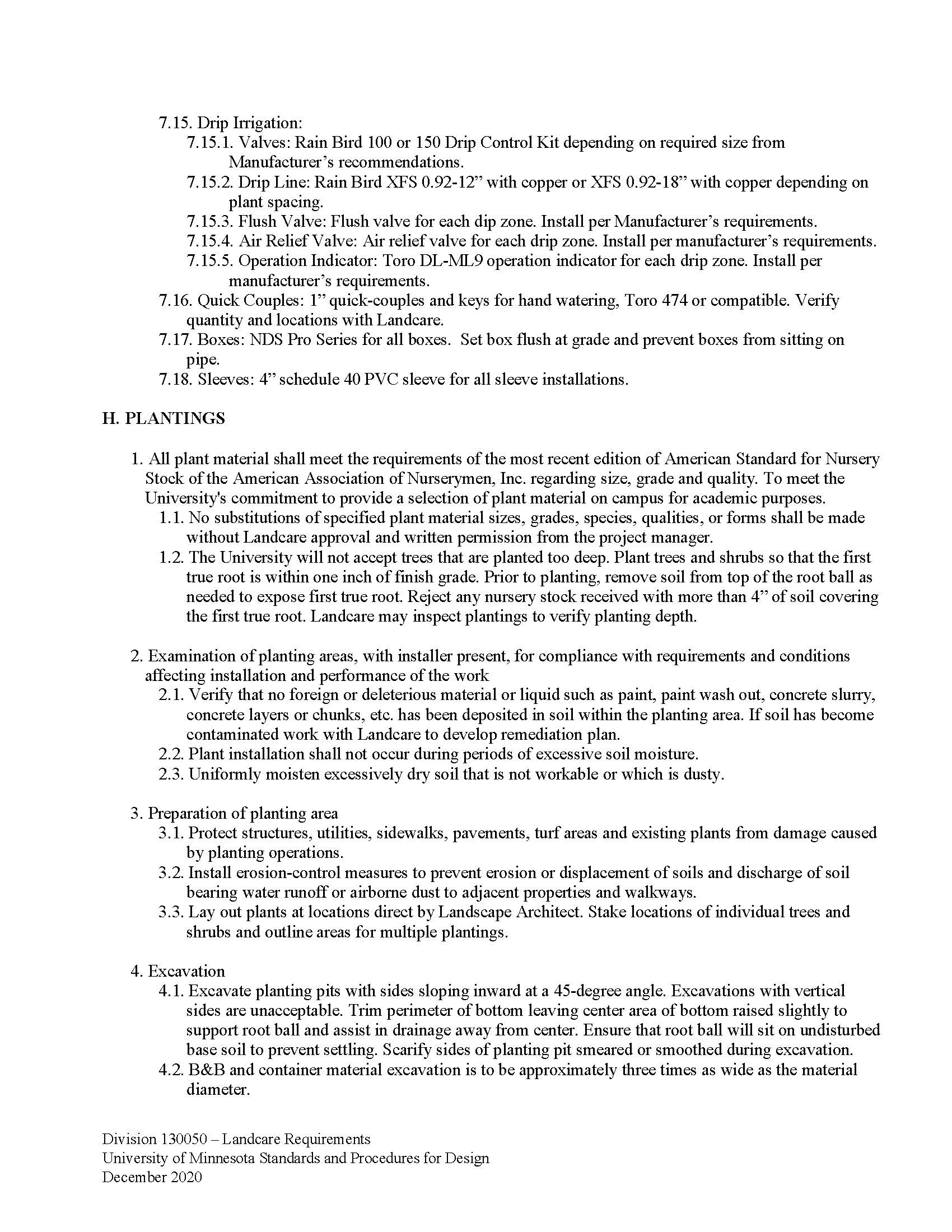
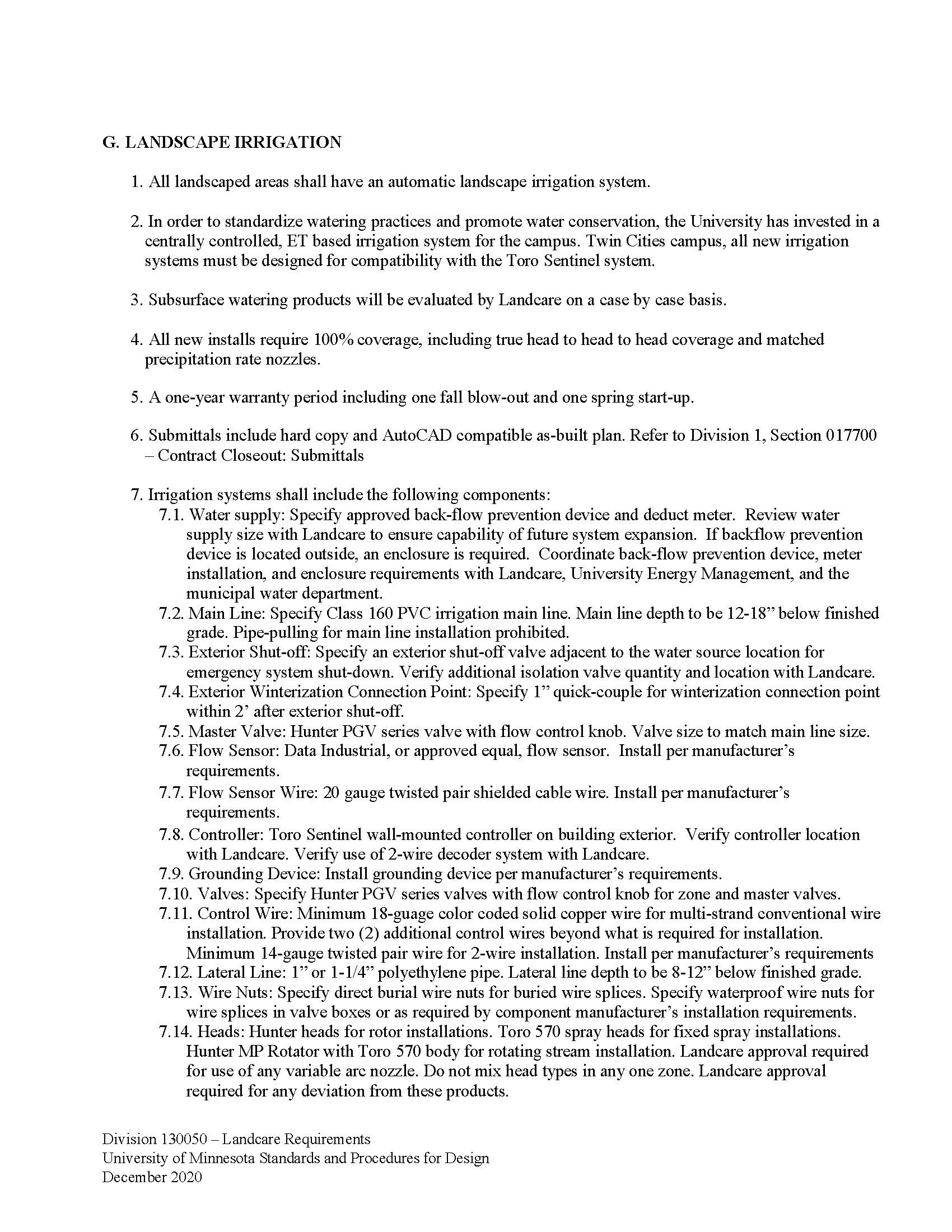
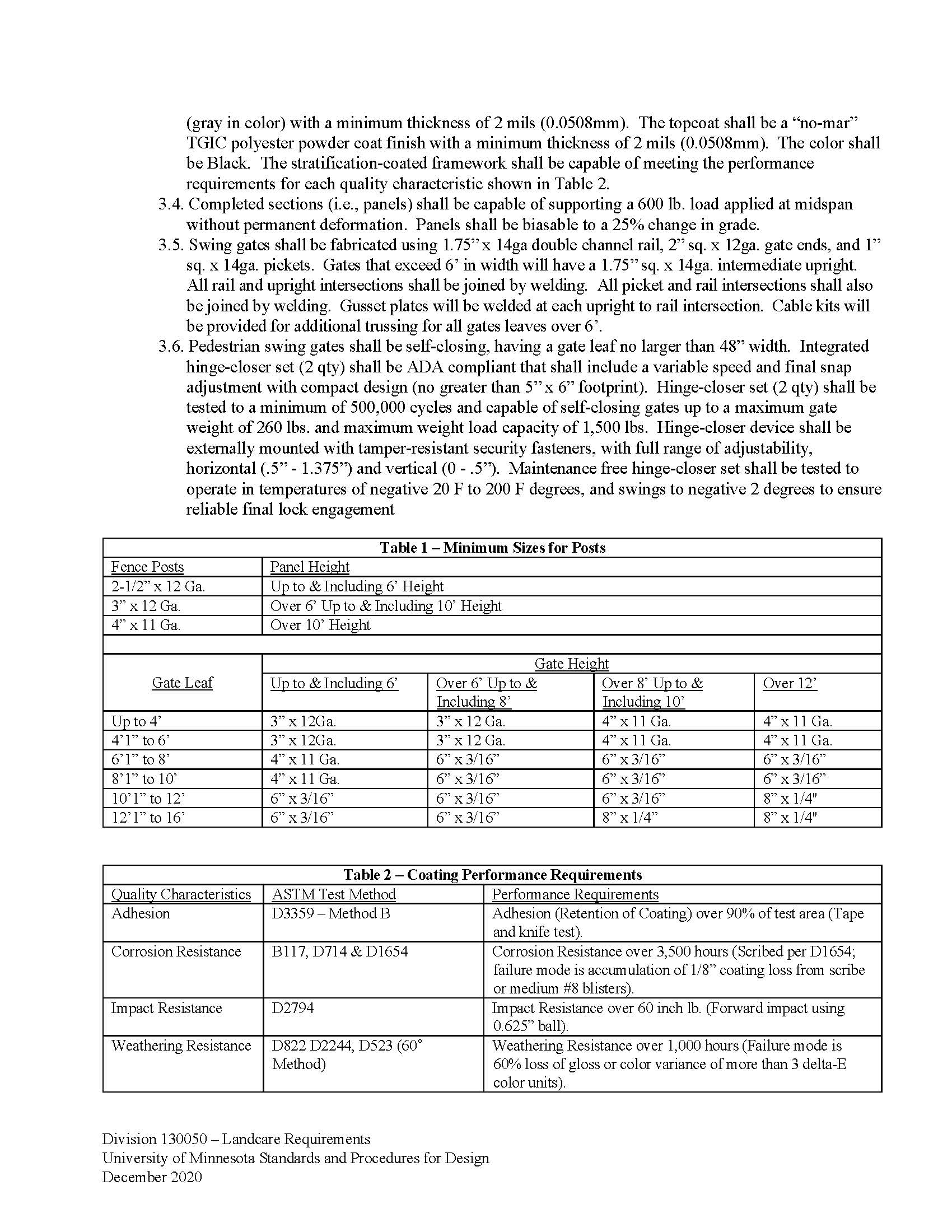
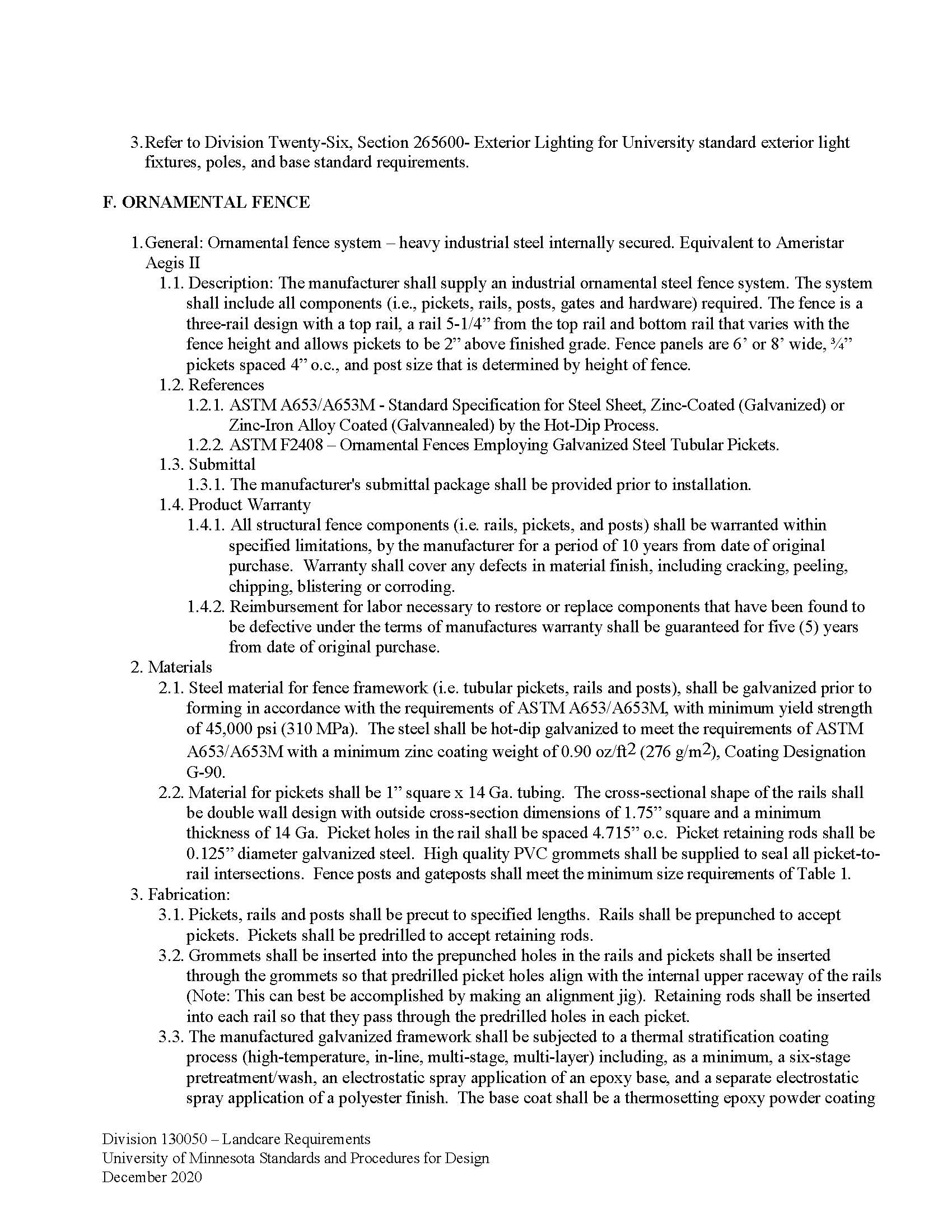
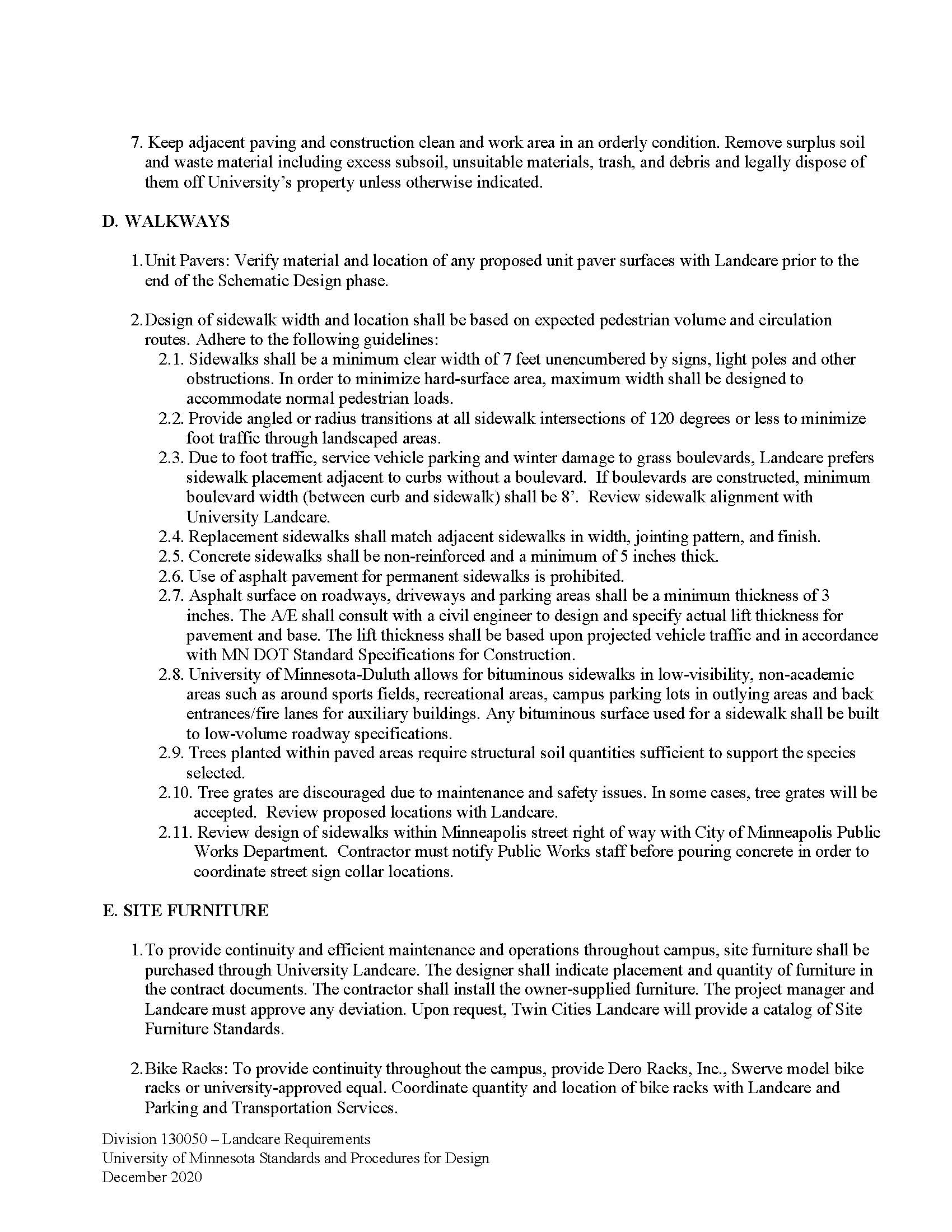
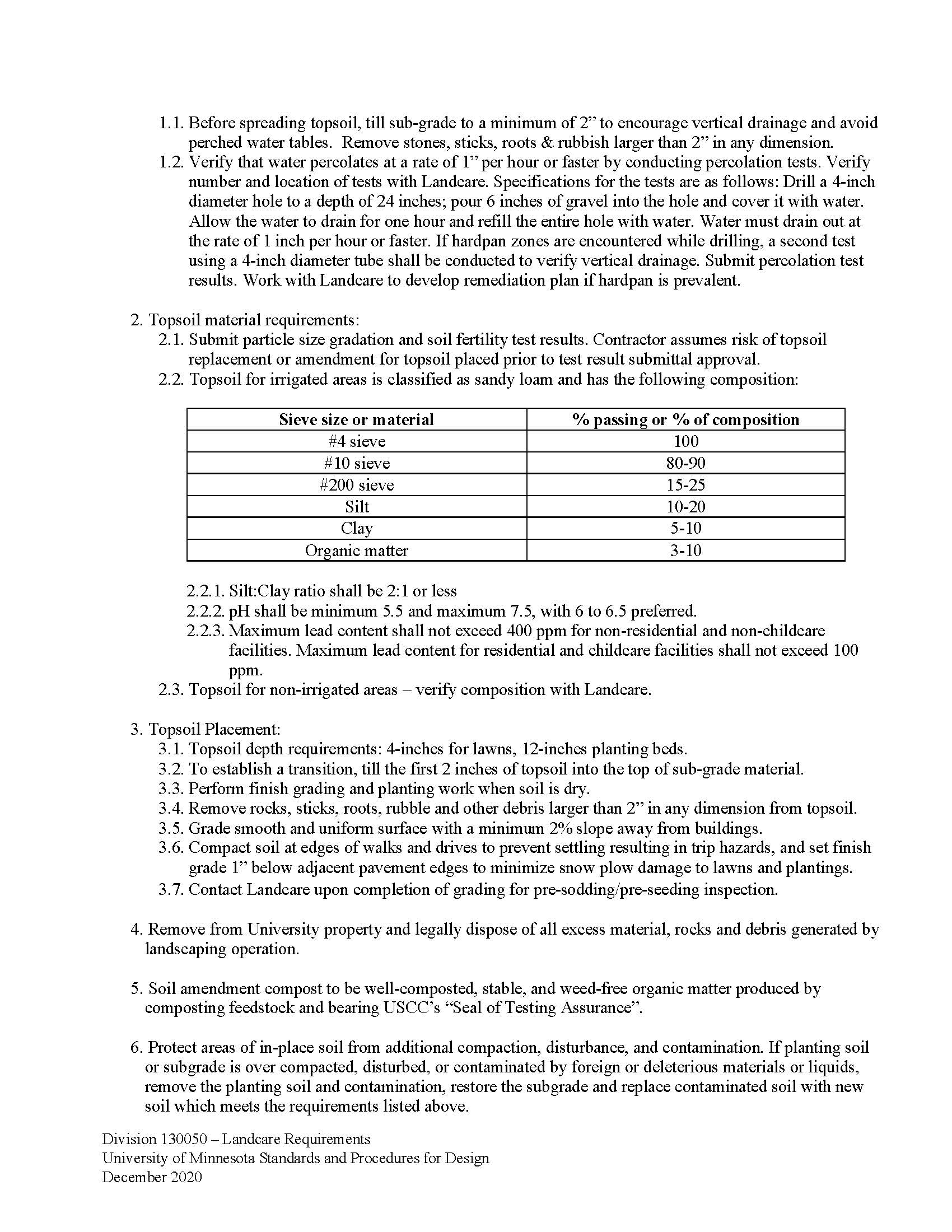
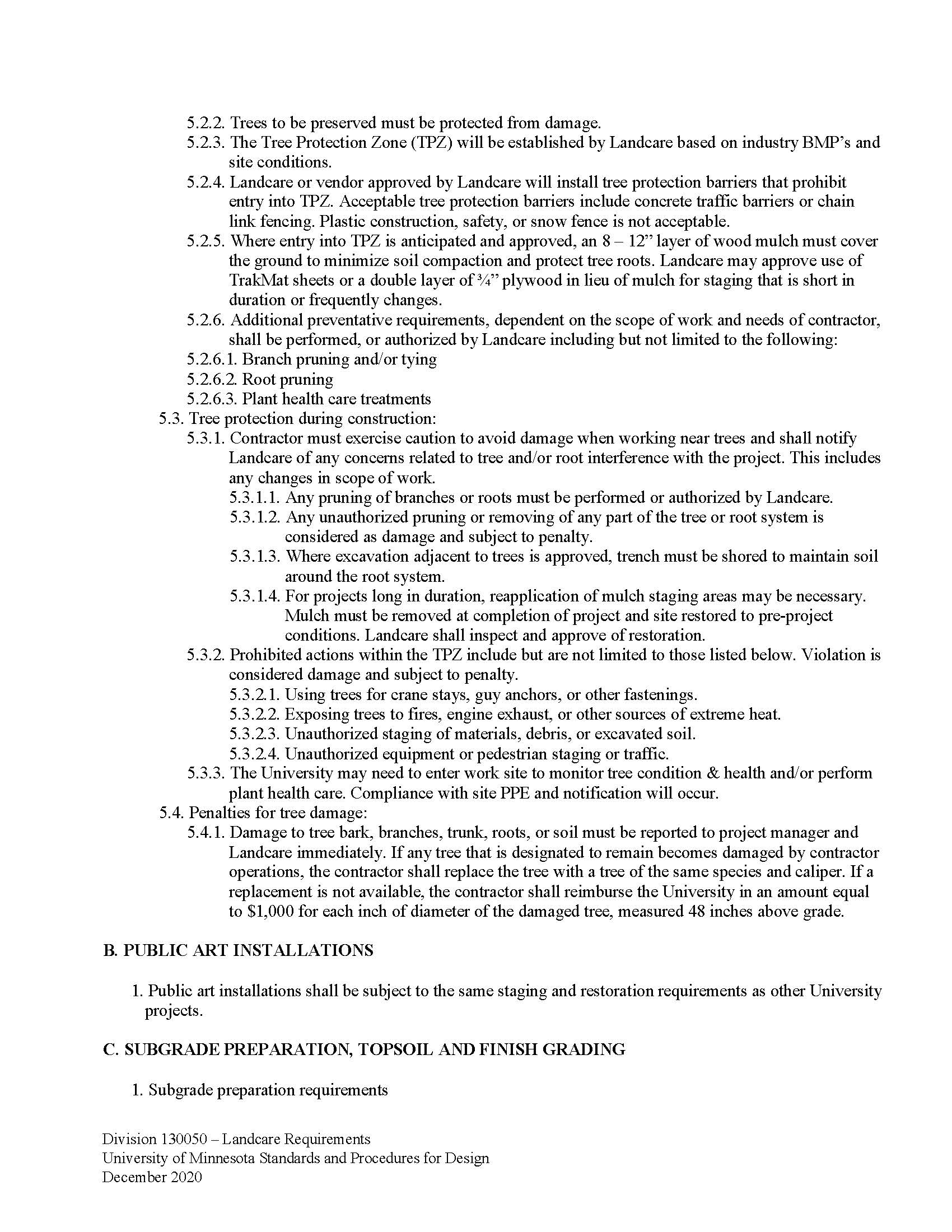
**EXHIBIT A**

**The Property**

**EXHIBIT B**

**University Landcare Requirements**

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